Supreme Court, U.S.
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No. 00-24

IN THE

# Supreme Court of the United States

PGA TOUR, INC.,

*Petitioner,*

*v.*

CASEY MARTIN,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## BRIEF IN OPPOSITION

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Respondent Casey Martin respectfully submits this brief in opposition to the petition for a writ of certiorari which seeks review of a March 6, 2000 decision of the United States Court of Appeals for the Ninth Circuit. That decision is reported at 204 F.3d 994 (9th Cir. 2000) and set forth in petitioner's appendix at App. 1a-15a.

## STATEMENT OF THE CASE

Petitioner has failed to meet its burden of demonstrating that a "compelling reason" exists for this Court to review the Ninth Circuit's straightforward application of settled legal principles to the unique factual record before it. Sup. Ct. R. 10. The petition presents fact-intensive contentions that do not warrant review by this Court because they involve highly unusual circumstances that are unlikely to recur and in any event have little or no application beyond the small group of professional golfers eligible to compete in PGA-sponsored events. *See* App. 12a (Ninth Circuit observation that decision was "intensively fact-based" and is unlikely to have broader consequences); *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 74 (1955) (certiorari ordinarily will be denied if the case involves circumstances or issues which are unlikely to be repeated).

The Ninth Circuit's decision simply enforced on an undisputed record unambiguous language in Title III of the Americans with Disabilities Act ("ADA") establishing that golf courses owned and operated by petitioner are places of public accommodation. Consistent with the individualized inquiry endorsed by this Court and circuit courts addressing the issue, the Ninth Circuit also held that the ADA *requires* petitioner to accommodate Mr. Martin's disability unless it proves that use of a cart would fundamentally alter the nature

of its competitions by giving *Mr. Martin* (as opposed to a hypothetical able-bodied golfer) a competitive advantage.[1]

The Ninth Circuit's "intensively fact-based" holding (App. 12a) was expressly based on detailed factual findings made in the district court following a six-day bench trial supporting the conclusion that permitting Mr. Martin to use a golf cart would not fundamentally alter the nature of PGA and Nike Tour (now known as the Buy.com Tour) golf. As the Ninth Circuit stated, the issue of "whether the accommodation of permitting Martin to use a golf cart fundamentally alters the PGA and Nike Tour competitions . . . was fully tried in the district court," and the district court's findings were affirmed under the appropriate clearly erroneous standard. App. 10a. Those findings demonstrated that "[a]ll that the cart does is permit Martin access to a type of competition in which he otherwise could not engage because of his disability." *Id.* at 11a. In addition, the Ninth Circuit correctly concluded that petitioner could not meet its burden because the evidence showed that petitioner's own walking requirement is riddled

1. Petitioner minimizes Mr. Martin's permanent disability, suggesting that it only "causes him pain." Pet. at 5. The Ninth Circuit noted "[t]here is no dispute that Martin is profoundly disabled" (App. 2a) and petitioner concedes that Mr. Martin has a disability under the ADA. Mr. Martin suffers from a congenital, degenerative circulatory condition called Klippel-Trenaunay-Weber Syndrome. The condition, first diagnosed when Mr. Martin was three years old, is manifested in a massive, permanent malformation of his right leg that dramatically limits his ability to walk. Although blood can circulate into his lower right leg, blockage at knee level prevents recirculation, resulting in severe pain and atrophy of the lower leg. He is placed at "significant risk" of fracturing his tibia, hemorrhaging and developing deep blood clots "by the simple act of walking," and other routine life activities. The condition has progressively deteriorated and Mr. Martin's right leg is at risk of amputation above the knee. Resp't App. 3a-4a. As the *Martin* district court observed, "[t]o perceive that the cart puts him — with his condition — at a competitive advantage is a gross distortion of reality." App. 36a.



with exceptions which permit the use of carts, and there is no Rule of Golf which prohibits accommodations for people with permanent disabilities who cannot walk the course.

The Ninth Circuit's decision is consistent with relevant precedent from this Court and other circuits, and presents no important federal question that needs to be resolved by this Court.[2] The Seventh Circuit's decision in *Olinger v. United States Golf Ass'n*, 205 F.3d 1001 (7th Cir. 2000), *reh'g denied en banc* (June 22, 2000) does not create a conflict on the law. Petitioner concedes that the Seventh Circuit never even addressed whether Title III applies to an entity offering professional golf tournaments, and fails to mention that the *Olinger* district court decision affirmed by the Seventh Circuit expressly followed *Martin*'s holding on the applicability of Title III.

Petitioner's secondary contention that on "essentially the same facts" (Pet. at 9) *Olinger* reached a different conclusion than *Martin* on whether Title III requires reasonable modification of a walking requirement is rebutted by reference to both *Olinger* and *Martin*. The Ninth Circuit expressly stated that the detailed factual findings made by the *Martin* district court distinguished the equally fact-specific holding in *Olinger*. The district court in *Olinger* stated that "this case is different from the *Martin* case," and emphasized important differences in both the factual records of the cases and the nature of the competitions to which the respective individuals sought access. The Seventh Circuit acknowledged the district court decision

2. The United States Department of Justice filed a brief and appeared at oral argument in the Ninth Circuit in support of Mr. Martin's position that petitioner is subject to Title III of the ADA and that allowing Mr. Martin to use a cart in PGA events is a reasonable modification that would not fundamentally alter the nature of PGA events. As the agency charged by Congress to issue implementing regulations "and to enforce Title III in court, the Department's views are entitled to deference." *Bragdon v. Abbott*, 524 U.S. 624, 646 (1998) (citation omitted).

in *Martin*, but never suggested that its holding was inconsistent with *Martin*. Thus, any differences in the decisions arise from differing factual records, not from conflicts on the law.

The Ninth Circuit properly rejected petitioner's attempt to evade the plain import of the ADA. Petitioner's proposed narrowing of the ADA finds no support in existing law, is utterly inconsistent with the broad remedial purpose of the ADA and, if recognized, would permit petitioner to exclude individuals not only on the basis of disability, but on the basis of race and religion. In sum, petitioner has not shown that the Ninth Circuit's decision involves recurring issues of national importance, conflicts with precedent from this Court or from other circuit courts, or otherwise warrants this Court's review.

## REASONS FOR DENYING THE WRIT

## PETITIONER PRESENTS NO ISSUE WARRANTING REVIEW BY THIS COURT

### A. The Ninth Circuit's Holding That Petitioner Is Subject To Title III Of The ADA Is Consistent With Precedent From This Court And Decisions From Other Circuit Courts Of Appeal

The Ninth Circuit's interpretation of Title III is consistent with every federal court decision construing that provision, including the *Olinger* decision which petitioner inaccurately suggests somehow conflicts with the Ninth Circuit's decision. The conflict suggested by petitioner simply does not exist. Holding that the USGA is subject to Title III of the ADA, the *Olinger* district court expressly stated that it was *joining* the *Martin* decision (later affirmed by the Ninth Circuit). The district court in *Olinger* rejected the same argument advanced here by petitioner: the "USGA's contention that it alone may set the rules is simply another version of its argument that the USGA is exempt from the provisions of the ADA, '[a]nd it is not.' " *Olinger v. United States Golf Ass'n*, 55 F. Supp. 2d 926, 933



(N.D. Ind. 1999) (quoting *Martin v. PGA Tour, Inc.*, 994 F. Supp. 1242, 1246 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000)), *aff'd*, 205 F.3d 1001 (7th Cir. 2000). No contrary decision exists. Petitioner relegates to a footnote the critical fact that the Seventh Circuit in *Olinger* "did not resolve" the applicability of Title III (Pet. at 13 n.16), and fails to acknowledge that the Seventh Circuit affirmed the district court's decision. *Olinger*, 205 F.3d at 1007; *see also id.* at 1005 (Seventh Circuit statement that it "can resolve this appeal on a more narrow ground"). Accordingly, there is no conflict between *Olinger* and *Martin*.

The Ninth Circuit's decision reflects a proper application of the plain language of the ADA and accords with uniform federal court authority addressing the scope of Title III of the ADA. Title III broadly provides that:

> No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C. § 12182(a).

Petitioner concedes that Congress expressly defined "public accommodation" to include, *inter alia*, "a golf course." Pet. at 13; 42 U.S.C. § 12181(7)(L). Nor does it dispute that the PGA "owns or operates certain golf courses" on which its golf tournaments are played. App. 2a. These dispositive concessions conclusively establish that Title III applies to the PGA. As the Ninth Circuit stated, "[t]here is nothing ambiguous about this provision [42 U.S.C. § 12181(7)(L)]; golf courses are public accommodations." App. 4a. As this Court recently stated, "unambiguous statutory text" in the ADA must be enforced as written. *Pennsylvania Dep't of Corr. v. Yeskey*, 524

U.S. 206, 212 (1998). When interpreting the term "public accommodation" under civil rights legislation, "it does not follow that the scope of [civil rights legislation] should be restricted to the primary objects of Congress' concern when *a natural reading of its language would call for broader coverage*." *Daniel v. Paul*, 395 U.S. 298, 307 (1969) (emphasis added). In accordance with this mandate, the Ninth Circuit properly affirmed the District Court's grant of summary judgment on an undisputed record that golf courses owned and operated by the PGA are places of public accommodation and therefore the PGA must allow a reasonable modification of its walking requirement in order to permit Mr. Martin to participate in its events. App. 15a.

Petitioner fails to mention that the Ninth Circuit's decision also accords with the decisions of other Courts of Appeals that have addressed the applicability of Title III of the ADA. *See, e.g., Menkowitz v. Pottstown Memorial Med. Ctr.*, 154 F.3d 113, 121-23 (3d Cir. 1998) (because Congress defined "public accommodation" to include, *inter alia*, a "hospital," 42 U.S.C. § 12181(7)(F), Title III requires hospital to make reasonable modifications to permit disabled doctor to practice at hospital); *see also Pallozzi v. Allstate Life Ins. Co.*, 198 F.3d 28, 33 (1999) (court noted that because 42 U.S.C. § 12181(7)(E) lists a "bakery" as a place of public accommodation, a bakery's refusal to sell bread to a blind person for use outside the premises would fall under the statute), *opinion amended on denial of reh'g*, 204 F.3d 392 (2d Cir. 2000); *Amir v. St. Louis Univ.*, 184 F.3d 1017, 1027 (8th Cir. 1999) (noting that 42 U.S.C. § 12181(7)(J) lists "undergraduate, or postgraduate private school" as a place of public accommodation so that St. Louis University was a place of public accommodation); *Johnson v. Gambrinus Co./Spoetzel Brewery*, 116 F.3d 1052, 1065 (5th Cir. 1997) (Title III applied and required brewery to make reasonable modification of its no animals policy to accommodate blind plaintiff).



The petition is an extended detour around the unambiguous language of Title III and the Ninth Circuit's straightforward application of the statute. First, petitioner attempts to artificially "bifurcate" the golf courses it operates into public zones ("outside the ropes") and private zones ("inside the ropes") by engrafting onto unambiguous statutory language an additional provision that the places listed in 42 U.S.C. § 12181(7) (which include "golf courses") are not subject to the ADA unless open to every member of the public. Pet. at 14. Petitioner concedes that the ADA applies to spectators at its golf courses, but argues that Congress intended the ADA to extend only up to the ropes separating competitors from spectators. *Id.*[3] The Ninth Circuit correctly rejected this contrivance, noting that "Title III does not restrict its coverage to members of the public; it provides that " '[n]o *individual* shall be discriminated against' in the enjoyment of public accommodations by reason of disability." App. 7a n.7 (emphasis added).

The game of golf is the activity normally engaged in at a golf course. *Daniel*, 395 U.S. at 308 ("statutory language" defining public accommodation under Civil Rights Act . . . "should be given full effect according to its generally accepted meaning"). Golf courses do not cease to be covered by the ADA when PGA competitors are playing on them. 28 C.F.R. pt. 36, app. B § 36.201 (scope of the term "place of public accommodation" under Title III "is *quite extensive* and . . . [applies] even if the operation is only for a short time") (emphasis added). The clarity of the statutory language compels rejection of the PGA's attempt to rewrite the statute. *Yeskey*, 524 U.S. at 212; 28 C.F.R. pt. 36, app. B § C ("A facility . . . is a place of accommodation for purposes of the ADA to the extent

3. It is undisputed that the area "inside the ropes" is not even limited to competitors. As the Ninth Circuit noted, scores of individuals who are not PGA members, including caddies, tour personnel and reporters, are permitted "inside the ropes" during PGA competition. App. 5a.

that its operations include those type of activities engaged in . . . by the facilities" listed in 42 U.S.C. § 12181(7)).

Courts interpreting Title II of the Civil Rights Act (which Title III of the ADA was modeled on) have consistently held that once a portion of a location is deemed a "public accommodation," the entire location is covered, and have rejected arguments that an operator of a public accommodation may divide its facilities into covered and non-covered zones. As one federal court stated:

> This bifurcation [of public accommodation into covered and non-covered areas] has no support in the plain language of the Act or the case law interpreting it. Once an establishment is determined to be a place of entertainment [also defined as a public accommodation under the ADA], *the entire facility is identified as such.*

*United States v. Lansdowne Swim Club*, 713 F. Supp. 785, 791 (E.D. Pa. 1989) (emphasis added), *aff'd*, 894 F.2d 83 (3d Cir. 1990); *see Daniel*, 395 U.S. at 306-08 (snack bar's status as covered establishment brings entire entertainment facility within Title II).

Petitioner also suggests that despite Congress' inclusion of golf courses as places of public accommodation in Title III, golfers competing on such courses should be excluded from statutory coverage because Congress did not specifically provide for their coverage. *See* Pet. at 11, 14 & n.18. This Court recently rejected the same argument under the ADA:

> [A]ssuming . . . that Congress did not "envision that the ADA would be applied [in suggested manner]," . . . *in the context of an unambiguous statutory text that is irrelevant*. . . . [T]hat a statute can be " 'applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. *It demonstrates breadth*.' "



*Yeskey*, 524 U.S. at 212 (citations omitted) (emphasis added); *accord CarParts Distrib. Ctr., Inc. v. Automotive Wholesaler's Ass'n of New England*, 37 F.3d 12, 19-20 (1st Cir. 1994); *cf. United States v. Baird*, 85 F.3d 450, 454 (9th Cir. 1996) (convenience store with two video games is "place of entertainment" and thus a public accommodation under Civil Rights Act, even though games are not substantial part of store's business), *cert. denied*, 519 U.S. 995 (1996).

Petitioner next attempts to manufacture an important federal issue for review by formulating a new argument that was not presented to and therefore not addressed by the Ninth Circuit. Petitioner artfully deletes from the petition all references to the statutory terms "facilities, privileges, advantages, or accommodations" from the broad statutory list of benefits Congress sought to ensure were equally available to persons with disabilities (42 U.S.C. § 12182(b)(2)(A)(ii)). Pet. at 14. Having unilaterally pared the statutory protections down to "goods and services," petitioner argues that granting relief to Mr. Martin under Title III somehow encroaches on Title I's prohibition against "discrimination in the private workplace." *Id.* at 10.

As an initial matter, petitioner's failure to raise this argument in the district court or the Ninth Circuit precludes its assertion here. *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319 n.3 (1999) (Supreme Court will not consider argument that was not raised or considered below). In addition, petitioner does not contend that this purported aspect of the Ninth Circuit's decision conflicts with any decision of this Court or any circuit court. Petitioner merely asserts the Ninth Circuit's decision reflects "an awkward reading of Title III." Pet. at 14. The argument is also meritless.

Title III grants equal access and enjoyment of different and often broader areas than Title I's employment-related provisions: Title III grants to "individuals" full and equal access to the "goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." 42 U.S.C. § 12182(a). Petitioner would introduce an unprecedented exception into the unambiguous language of Title III (which provides protection to all "individuals") and limit protection to spectators at a public event but permit discrimination against individuals seeking to earn money while using the "goods, services, facilities, privileges, advantages, or accommodations" of a public accommodation. Pet. at 14.

The Third Circuit recently rejected this same "blanket interpretation that Congress intended Title III to apply only to members of the public." *Menkowitz*, 154 F.3d at 121. Employing reasoning equally responsive to petitioner's contention that Title III applies only to spectators at PGA events, the Third Circuit held:

> Equally unavailing is the hospital's argument that illustrations cited by the ADA's legislative history all describe instances of members of the public as clients or customers. That a statute can be "applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth." . . . Nor can we agree with the hospital's argument that Title III offers no protection against disability discrimination by virtue of the appellant's "unique business relationship" with the hospital. This contention runs contrary to the plain language and legislative history of Title III which in no way mentions any sort of "business relationship" that would preclude an "individual" from asserting a cause of action if denied the "full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation."



*Id.* (citations omitted).

Petitioner's view would forfeit the protections of anti-discrimination laws for a host of individuals who currently enjoy full and equal access to public accommodations. For example, an "auditorium," a "museum" and a "private school" are places of public accommodation (42 U.S.C. §§ 12181(7)(D), (H) & (J)), and do not cease to be for an invited speaker who is paid a fee as an "independent contractor." Petitioner posits that members of the public attending the lecture are protected, but the guest speaker can be discriminated against on the basis of disability. Similarly, petitioner would withhold anti-discrimination protection from a game show contestant competing for prize money before a studio audience, even though Title III unambiguously applies to all places of "exhibition or entertainment." 42 U.S.C. § 12181(7)(C). But Congress extended the protections of Title III to all "individuals" at public accommodations, regardless of Title I's potential applicability, and this is how the statute is being consistently applied across the country. *See, e.g., Menkowitz*, 154 F.3d at 118-23; *CarParts*, 37 F.3d at 19-20.

As the Ninth Circuit held, competitors in PGA events necessarily are members of the "public" whom the PGA has admitted to its courses. App. 7a. The record showed that:

> Any member of the public who pays a $3000 entry fee and supplies two letters of recommendation may try out in [petitioner's] qualifying school. At the initial stage, it seems plain that the golf course on which the elimination begins is a place of public accommodation. As even the PGA admits, "[t]he competition areas of some amateur sporting events may well constitute places of public accommodation under Title III of the ADA when virtually any

> member of the public can participate." We fail to see, however, why a winnowing process would change the nature of the facility. . . .

*Id.* at 7a-8a.

Petitioner argued in the district court that it was *entirely exempt* from Title III of the ADA as a private club. The district court rejected this contention, "because, among other reasons, it is a commercial enterprise offering athletic events to the public." *Id.* at 3a n.5; *see also id.* at 44a-51a.[4] Although petitioner did not challenge this ruling in the Ninth Circuit or here, at bottom it continues to seek a license to discriminate. Accepting petitioner's argument that Title III does not apply to it would "render[ ] the private club exemption virtually irrelevant," *id.* at 53a, and would grant the PGA free rein to discriminate "inside the ropes" not only on the basis of any disability, but on the basis of race or religion. The PGA's counsel acknowledged this before the district court. Resp't App. 1a-3a. The Ninth Circuit foreclosed this result by applying Title III according to its terms, consistent with all relevant precedent.

### B. The Ninth Circuit Held Only That Based On The Full Record Developed At Trial, The District Court Properly Found That Mr. Martin Was Entitled To Relief Under Title III Of The ADA

Petitioner misstates the Ninth Circuit's holding and analysis under Title III to argue that the Ninth Circuit sweepingly required "professional sports organizations to grant waivers of their substantive rules of competition to accommodate disabled competitors." Pet. at 19. Similarly, seeking to create the impression that *Martin* has broad ramifications, petitioner

4. Petitioner is a lucrative commercial enterprise employing hundreds of persons and has annual revenues of over $300 million. Its assets include golf courses which it owns, leases and operates and on which it conducts professional golf tournaments. *See* Resp't App. 36a-39a; App. 2a.



mischaracterizes the nature of Mr. Martin's claim under the ADA as an outright "challenge . . . to one of the competitive rules applicable to certain golf tournaments." *Id.* at 2. Mr. Martin did not seek and the Ninth Circuit did not grant such broad relief. Rather, Mr. Martin challenged the petitioner's discriminatory conduct toward him in failing to comply with the ADA's mandate that it reasonably accommodate his permanent disability. The Ninth Circuit clarified that its holding, which was expressly based on the unique factual record developed at Mr. Martin's trial, carried no such broad significance:

> The nature of the district court's findings reflect the fact that whether an accommodation fundamentally alters a competition is an intensively fact-based inquiry. For that reason, we reject PGA's argument that permitting Martin to use a golf cart would open the door to future decisions requiring that disabled swimmers or runners be given a head start in a race. . . . We have little doubt that fact-based inquiries into the effects of such accommodations would result in rulings that those accommodations fundamentally altered the competitions.

App. 12a.

The Ninth Circuit simply affirmed as "not clearly erroneous" (*Id.*) the district court's findings of fact made after a six-day bench trial under the individualized inquiry mandated by the ADA. Title III of the ADA broadly provides that any private entity that owns, leases or operates a "public accommodation" must make a "reasonable modification" of its "policies, practices, or procedures" when necessary to make its "goods, services, facilities, privileges, advantages, or accommodations" available to individuals with disabilities, unless such modification would "fundamentally alter the nature"

of its "goods, services, facilities, privileges, advantages or accommodations." 42 U.S.C. § 12182(b)(2)(A)(ii).[5]

Because the PGA conceded that Mr. Martin has a disability, Mr. Martin's only burden was to show that a reasonable modification was requested. *See, e.g., Johnson*, 116 F.3d at 1059. Petitioner has never contested the reasonableness of a cart as an accommodation that will permit Mr. Martin to participate in the "goods, services, facilities, privileges, advantages, or accommodations" offered by petitioner. App. 9a. Consistent with uniform authority under the ADA, the Ninth Circuit held that the ADA required the PGA to permit the modification unless it could prove that, in view of Mr. Martin's individual circumstances, the modification would fundamentally alter the nature of PGA Tour golf competition. App. 10a; *accord Johnson*, 116 F.3d at 1060 (Title III analysis "focuses on the specifics of the plaintiff's or defendant's circumstances and not on the general nature of the accommodation"); *Crowder v. Kitagawa*, 81 F.3d 1480, 1486 (9th Cir. 1996) ("the determination of what constitutes reasonable modification is highly fact-specific, requiring case-by-case inquiry"); *Staron v. McDonald's Corp.*, 51 F.3d 353, 356 (2d Cir. 1995) ("it is clear that the determination of whether a particular modification is 'reasonable' involves a fact-specific, case-by-case inquiry"); *D'Amico v. New York State Bd. of Law Examiners*, 813 F. Supp. 217, 221 (W.D.N.Y. 1993) ("the most important fact that the Court must consider in determining the reasonableness of the . . . accommodations is the nature and extent of plaintiff's disability"); *see also* 29 C.F.R. pt. 1630, app. § 1630.9 (process of determining appropriate reasonable accommodation requires individual assessment of particular job at issue and the specific limitations of the particular person in need of the reasonable accommodation).[6]

5. Petitioner totally avoids discussing the governing statutory phrase — "reasonable modifications." 42 U.S.C. § 12182(b)(2)(A)(ii). Through this technique, petitioner misdescribes the Ninth Circuit's opinion as requiring "waiver" (as opposed to "reasonable modification") of a "substantive rule." *See, e.g.*, Pet. at 2, 8-9, 11, 21, 24. Petitioner's attempt to divert this Court from *Martin*'s actual and proper analysis only underscores the absence of any genuine issue requiring this Court's authoritative guidance. *See infra* pp. 16-24.



The individualized inquiry employed by the Ninth Circuit and other courts accords with the individualized approach endorsed by this Court when evaluating a proposed accommodation under the Rehabilitation Act of 1973, the civil rights statute the ADA was modeled after and which this Court has held should be interpreted consistently with the ADA. *Bragdon*, 524 U.S. at 638. This Court has instructed:

> [T]he district court *will need to conduct an individualized inquiry and make appropriate findings of fact*. Such an inquiry is essential if § 504 [of the Rehabilitation Act] is to achieve its goal of protecting handicapped individuals from deprivations based on prejudice, stereotypes, or unfounded fear, while giving appropriate weight to [any countervailing considerations].

*School Bd. of Nassau Co. v. Arline*, 480 U.S. 273, 287 (1987) (emphasis added). Significantly, the Seventh Circuit (the court petitioner contends has repudiated individualized inquiry under the ADA) recently quoted this language from *Arline* in reaffirming the appropriateness of evaluating the individual

6. *Accord Matthews v. NCAA*, 79 F. Supp. 2d 1199, 1204 (E.D. Wash. 1999) ("When any court applies the ADA, it must examine the facts specific to the case and the disabled individual's circumstances, and the accommodations that might allow him to participate."); *Stillwell v. Kansas City, Mo. Bd. of Police Comm'rs*, 872 F. Supp. 682, 687 (W.D. Mo. 1995); *cf. Anderson v. Gus Mayer Boston Store of Del.*, 924 F. Supp. 763, 781 (E.D. Tex. 1996) ("The legislative history of [Title I of] the ADA recommends that the disabled person be consulted about what a reasonable accommodation might be to avoid employers overstating costs.").

circumstances of a plaintiff alleging an ADA claim. *Washington v. Indiana High Sch. Athletic Ass'n*, 181 F.3d 840, 851 (7th Cir.), *cert. denied*, 120 S. Ct. 579 (1999). Petitioner relegates to a footnote its citation to *Washington*, and there does not even acknowledge the Seventh Circuit's specific adoption of an individualized inquiry. *See also infra* Point B(2).

1. *The Ninth Circuit's Holding Was Expressly Based On Specific Factual Findings Supporting The Conclusion That Golf Is A Game Of Shot Making, Not Walking*

The petition reads as if the Ninth Circuit's conclusions under the ADA were judicial fiat based on "guesswork." Pet. at 22; *see also id.* at 8, 21. In fact, each of the Ninth Circuit's conclusions was expressly based on evidence admitted at the six-day bench trial conducted by the district court. Remarkably, the petition does not even acknowledge that the findings were made by the district court and affirmed by the Ninth Circuit under the appropriate clearly erroneous standard.

The record demonstrated that the Rules of Golf are the recognized fundamental rules of the game; as the immediate past president of the USGA testified, "[i]f you want to play golf, you need to play by these rules." Resp't App. 18a. Although it is nowhere found in the petition, the Ninth Circuit noted that the definition of the game set forth in the Rules of Golf makes it clear that the essence of the game is shot-making:

> Rule 1. The Game.
>
> 1-1. General.
>
> The Game of Golf consists in playing a ball from the teeing ground into the hole by a stroke or successive strokes in accordance with the Rules.



*Id.* at 59a; App. 9a. Significantly, the Ninth Circuit and the district court relied on evidence establishing that the Rules of Golf do not prohibit the use of carts or require players to walk. App. 9a. The PGA Commissioner acknowledged that "the essentials" of the game of golf are contained in Rule 1-1 of the Rules of Golf, *id.* at 23a; *see also id.* at 17a-18a, and that "the key element of skill in the game of golf is shot-making." *Id.* at 28a. Petitioner was unable to produce any document stating directly or indirectly that walking is fundamental to competitive golf.[7] *Id.* at 22a-23a.

With limited exception, the only way a player can obtain the right to participate in the PGA or Nike Tour is to "qualify" at the annual qualifying event, called the "Q School." *Id.* at 40a-58a. For 30 years the PGA rules permitted players to use carts in all three stages of the Q School. There was no evidence that over the course of 30 years any player or PGA official *ever* complained that a player who chose to use a cart had an advantage over those players who chose to walk.[8]

Second, as the Ninth Circuit observed, petitioner, outside this lawsuit, regularly rebuts its contention that walking is fundamental to PGA golf by applying exceptions that permeate its must-walk rule:

- Every golfer who advances to the third stage of Q School is assured of a place on either the PGA or

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7. The Rules of Golf provide a model *optional* condition for a competition to include if the competition wishes to require players to walk. The PGA did not adopt such optional condition for its competitions. The conditions of competition adopted by the PGA specifically provide for exceptions to the must-walk rule. *Id.* at 18a-20a, 59a-60a, 62a-63a.

8. Only in 1997, the year Mr. Martin played in the qualifying rounds of the Q School, did the PGA for the first time require players to walk in the final stage unless an exception was granted.

Nike Tour. *Id.* at 25a-26a, 34a-35a. Yet the PGA still does not require any golfer to walk in the first two qualifying stages when testing the skills of players who will become Tour members. *Id.* at 5a-7a, 16a-17a, 21a-22a, 40a-58a.

• A player can also earn the right to play in a single PGA event on the PGA and Nike Tours as an exempt entry by playing in the open qualifying event for that tournament and being one of the four lowest-scorers in that event. Carts are permitted for such events. *Id.* at 24a-25a, 29a-33a.

• The PGA routinely permits all players-to ride in carts during PGA and Nike Tour competition for administrative convenience, including when players retrieve a ball hit out of bounds, when a lengthy distance separates a green and the next tee and sometimes during play of an entire hole. *Id.* at 4a-5a, 61a.

• The PGA permits carts and does not require walking on its highly competitive Senior Tour, which has been called "the most successful professional sports venture of the 1980s." *Id.* at 7a-16a.

• The PGA admits that carts have been a part of the game of golf for 30-40 years. *Id.* at 28a.

Petitioner argues that it has adopted a rule requiring players to walk and that it cannot be required to modify this rule in any manner because "high-level athletic competition requires that competitors be tested under the same rules." Pet. at 21. A change in any rule, petitioner contends, could



hypothetically confer a competitive advantage to certain golfers. The Ninth Circuit noted that petitioner regularly disproves this contention by its own conduct. For example:

• The PGA permits golfers who walk to compete against golfers who use carts in (i) Q School, (ii) the weekly qualifying tournaments, and (iii) the Senior Tour.

• The PGA rules provide no handicap or penalty for players who use carts.

*See* App. 10a; Resp't App. 24a-25a, 29a-33a. Petitioner has never questioned the integrity of any of these competitions.

Consistent with the case-by-case inquiry mandated by the ADA, the Ninth Circuit did not "guess" whether permitting Mr. Martin to use a cart would "fundamentally alter" PGA tournament golf. Rather, it addressed the factual record developed in *Martin* showing that golf is not a race against the clock or against human endurance, and that "[t]he central competition in shot-making would be unaffected by Martin's accommodation" (App. 10a-11a):

> The district court found that the purpose of requiring players to walk was to inject a fatigue factor into the shot-making of the game. *It also found, however,* that "the fatigue factor injected into the game by walking the course cannot be deemed significant under normal circumstances." *It further found* that, at the low levels of intensity of exercise involved in untimed walking of a golf course during a competition, "fatigue . . . is primarily a psychological phenomenon. . . . Stress and motivation are the key ingredients here." The court noted that, *given the choice of carts or walking in other tours, large numbers of players*

> *chose to walk.* . . . Against this background, the district court evaluated whether use of a cart would give Martin an advantage over the other players who were required to walk.

*Id.* at 10a (citations omitted & emphasis added).

The Ninth Circuit observed that the fact-intensive issue of whether permitting *Mr. Martin* to use a cart would fundamentally alter the nature of PGA golf competition also was "*fully tried* in the district court." *Id.* (emphasis added). The court summarized the evidence admitted at trial concerning the nature and extent of Mr. Martin's disability, and how it affects his ability to walk a golf course, and agreed with the district court's *finding* "after considering these factors . . . that Martin 'easily endures greater fatigue even with a cart than his able-bodied competitors do by walking.' " *Id.* The court specifically noted "[t]here was ample evidence to support all of these findings, and they are not clearly erroneous." *Id.*[9]

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9. Unable to point to any real conflict, petitioner strains to analogize *Martin* to inapposite cases holding that maximum age or semester requirements in high school sports cannot be waived without upsetting the competitive balance of high school athletics. Pet. at 23 n.26. As the Ninth Circuit concluded, these cases present issues not involved here. The "foundation of these cases . . . was a finding, or evidence compelling a finding," that the eligibility requirements sought to be modified for disabled students — unlike the walking rule in the present case — were closely fitted with the purpose of athletic competition involving teenagers still growing up. App. 13a. *See, e.g., Sandison v. MHSAA*, 64 F.3d 1026, 1035 (6th Cir. 1995) (age maximum is a "necessary" regulation in high school sports because it "safeguards against injury" and "prevents any unfair competitive advantage"); *Pottgen v. MSHSAA*, 40 F.3d 926, 929 (8th Cir. 1994) (age maximum is essential element of high school team sports because it "reduc[es] the competitive advantage flowing to teams using older

(Cont'd)



The Ninth Circuit astutely recognized that "[t]he mere fact that the PGA has defined walking to be part of the competition cannot preclude inquiry, or PGA will have been able to define itself out of the reach of the ADA." App. 12a. Petitioner's misplaced emphasis on whether it has declared one of its rules "substantive" — a term not employed in the ADA, *Martin* or even *Olinger* — is an effort to avoid the plain language of the ADA. The Ninth Circuit exposed the fatal flaw in petitioner's argument that once it unilaterally deems a rule substantive, the rule is insulated from any accommodation that could permit a person with a disability to participate. "The difficulty with this position is that it reads the word 'fundamentally' out of the statutory language, which requires reasonable accommodation unless PGA can demonstrate that the accommodation would 'fundamentally alter the nature' of its competition." *Id.* at 11a (quoting 42 U.S.C. § 12182(b)(2)(A)(ii)).

If petitioner's view were adopted, the PGA would effectively elevate professional sports beyond the reach of Congress, no matter how great a barrier to participation a given rule poses, no matter how insignificant the rule to the competition, and no matter how reasonable the modification requested. As the district court accurately observed,

> the PGA Tour's contention that it may alone set the rules of competition, and that any modification of any of its rules (which may be necessary to accommodate the disabled) fundamentally alters the nature of PGA tournaments, is simply another version of its argument that the PGA Tour is exempt from the provisions of the ADA.

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(Cont'd)

athletes; protects younger athletes from harm; discourages student athletes from delaying their education to gain athletic maturity; and prevents over-zealous coaches from engaging in repeated red-shirting to gain a competitive advantage").

App. 23a. The district court noted:

> the ADA does not distinguish between sports organizations and other entities when it comes to applying the ADA to a specific situation. . . . the disabled have just as much interest in being free from discrimination in the athletic world as they do in other aspects of everyday life.

*Id.* at 24a.[10]

The Ninth Circuit properly enforced the ADA's requirement that all organizations subject to the ADA modify their rules to permit full participation by people with disabilities. The ADA's mandate has required organizations to make significant changes not only to rules of style, but to the way they do business.[11] To argue that in sport the rules

10. Moreover, professional sports organizations including the NBA, the NFL, the NHL and Major League Baseball appeared before Congress during its consideration of the ADA. None of these organizations suggested that the ADA would not apply to them. Instead, they sought guidance from Congress concerning whether drug-testing programs for *players* would comply with the ADA. *See* H.R. Rep. No. 101-485 pt. 2, at 80-81 (1990), *reprinted in* 1 Staff of House Comm. on Educ. and Labor, 101st Cong., *Legislative History of P.L. 101-336, The Americans with Disabilities Act*, at 353-54 (1991).

11. For example, after challenges under the ADA, Burger King agreed to develop an electronic device to enable hearing-impaired people to order drive-through food, and a bar review course agreed to provide sign language interpreters and braille materials. Sullivan, *The Americans with Disabilities Act of 1990: An Analysis of Title III and Applicable Law*, 29 Suffolk U.L. Rev. 1117, 1135-36 (1995); *D'Amico*, 813 F. Supp. at 223-24 (requiring Board to allow person with disability four days to complete bar exam); *see also Stevens v. Premier Cruises, Inc.*, 215 F.3d 1237 (11th Cir. 2000) (Title III applies to cruise ships in U.S. waters); *cf.* 42 U.S.C. § 12101(a)(5) (discrimination against persons with disabilities includes "failure to make modifications to existing facilities and practices").



themselves are what is fundamental to the enterprise is to try to define sport as exempt from the ADA — and to do so in an insidious way. If no rule of competition, regardless of its purpose, can be modified to permit participation by people with disabilities, then — ironically — sport would become the only industry in America permitted to construct barriers to access that are unrelated to performance. If a player qualifies by demonstrating exceptional ability in the sport's essential skills, that he has a permanent disability unrelated to the sport's essentials should not exclude him from using that ability. It bears emphasis that professions with weightier responsibilities to society, such as the medical profession, have accommodated persons with learning and other disabilities by, for example, allowing additional time to take exams, to give them the opportunity to participate in these important professions. *See, e.g., Menkowitz*, 154 F.3d at 122 ("medical doctor with staff privileges . . . may assert a cause of action under Title III of the ADA"); U.S. Dep't of Justice, Civil Rights Division, The Americans with Disabilities Act: Title III Technical Assistance Manual ¶ 4.1100, illus. 4 (Nov. 1993) (same); *Agranoff v. Law School Admission Council, Inc.*, 97 F. Supp. 2d 86, 88 (D. Mass. 1999) (time and a half to complete Law School Admissions Test is reasonable accommodation); *D'Amico*, 813 F. Supp. at 224 (plaintiff may take bar examination over four days rather than the usual two).[12]

12. Congress enacted the ADA understanding that discrimination against people with disabilities manifests itself in a variety of ways. 42 U.S.C. § 12101(a)(3)-(5). In addition to blatant discrimination born of malice, people with disabilities have been unintentionally but routinely deprived of the opportunity to participate in a variety of activities because of facially neutral rules or procedures that have the effect of excluding the disabled. Congress specifically foreclosed retreat to "facially neutral" rules, and rejected attempts to justify exclusion based on disability because "the rules are the rules." *See, e.g., Crowder*, 81 F.3d at 1484 (Title III requires modification of state law animal

(Cont'd)

The Ninth Circuit did not purport to change the rules of golf; it only enforced the ADA's mandate that an otherwise qualified competitor must be allowed to *get to the game*. App. 11a ("All that the cart does is permit Martin access to a type of competition in which he otherwise could not engage because of his disability.").

2. *The Ninth Circuit's Decision Does Not Conflict With Olinger*

Petitioner's obligatory assertion that the Ninth Circuit's ruling based on the unique record before it is "squarely contrary" (Pet. at 9) to *Olinger* is rebutted by reference to both *Martin* and *Olinger*. The Ninth Circuit acknowledged the *Olinger* district court opinion (subsequently affirmed by the Seventh Circuit) and stated that the detailed factual findings made by the *Martin* district court "distinguishes Martin's case from *Olinger*, . . . in which the district court found *on the evidence there presented* that use of a cart can provide a golfer with a competitive advantage over a golfer who walks." App. 13a-14a n.9 (emphasis added). Similarly, the Seventh Circuit acknowledged the district court decision in *Martin*, but never suggested that its holding was inconsistent with *Martin*. *Olinger*, 205 F.3d at 1003-04. Thus, any differences in the decisions arise from differing factual records, not from conflicts on the law.

The district court opinion affirmed by *Olinger* confirmed even more directly the lack of any conflict with *Martin*:

> A word should be added about the *Martin* case. . . . *this case is different from the Martin case*. First, this

(Cont'd)
quarantine requirement; although the "requirement applies equally to all persons entering the state with a dog, its enforcement burdens visually-impaired persons in a manner different and greater than it burdens others"); *Thomas v. Davidson Academy*, 846 F. Supp. 611, 619 (M.D. Tenn. 1994) (ADA forecloses "blind adherence to policies and standards resulting in a failure to accommodate a person with a disability").



> case focuses on a single event, not a series of multi-level weekly tournaments. Further the parties in *Martin* presented different evidence, so the records differ. For example, the *Martin* court cited the testimony of Dr. Gary Klug with some frequency; this court granted the USGA's motion to exclude Dr. Klug's testimony. . . .

*Olinger*, 55 F. Supp. 2d at 933 n.4 (emphasis added).

Petitioner misreads *Olinger* to contend that the Seventh Circuit and district court there did not undertake an individualized inquiry. This contention does not survive a reading of *Olinger*. The *Olinger* district court stated that "[a] court deciding a case under the ADA *must make an individualized decision* concerning the plaintiff." *Id.* at 937 (emphasis added). Consistent with the analysis undertaken in *Martin*, the Seventh Circuit affirmed the *Olinger* district court, examining: (1) "the 'nature of the "program" to which Mr. Olinger seeks access: the U.S. Open' " and (2) whether granting the requested accommodation "would alter the fundamental nature of *that competition*," *i.e.*, the U.S. Open, not the continual succession of tournaments over the course of nearly a year, to which Mr. Martin sought access based on a different factual record. *Olinger*, 205 F.3d at 1006 (emphasis added); *see also Olinger*, 55 F. Supp. 2d at 937 ("As noted before . . . it is also important to remain focused on the nature of the 'program' to which Mr. Olinger seeks access: the U.S. Open."). Petitioner nowhere acknowledges the important distinctions recognized in *Olinger* between (a) the U.S. Open, a single tournament comprising 72 holes of golf (usually played over four days) (*Olinger*, 55 F. Supp. 2d at 928), and (b) the nearly year-long succession of tournaments around the nation in which PGA or Nike Tour members compete.

The Seventh Circuit also noted that "[t]he focus of our opinion has been on *one* question: Must the *USGA* allow *Ford Olinger* to

compete while riding in a golf cart instead of walking?" *Olinger*, 205 F.3d at 1007 (emphasis added). It expressly based its ruling on the *Olinger* factual record, which was a substantially different record than the record developed at the *Martin* trial. Acknowledging that the accommodation of a cart was "reasonable in a general sense" (*Id.* at 1006),[13] the Seventh Circuit nevertheless agreed with the district court's conclusion that the lay and expert testimony admitted in *Olinger* justified denying Mr. Olinger's request to use a cart in the U.S. Open. This fact-specific holding was expressly based on the Seventh Circuit's endorsement of the district court's comprehensive factual "findings [that] are amply supported in the record." *Olinger*, 205 F.3d at 1006. In addition to crediting testimony from golfers concerning the role physical stamina had played in certain U.S. Opens, the Seventh Circuit emphasized that "Olinger's own expert witness . . . likewise testified that physical endurance and stamina and uniform rules are critical factors. . . ." *Id.* at 1006. Thus, far from announcing any broad split with the Ninth Circuit, the Seventh Circuit simply affirmed a district court holding based on findings of fact made "after a full trial" in which the evidence received was quite different than the evidence heard by the court in *Martin*. *Id.* at 1004.

Any doubt as to whether the Seventh Circuit employs the same "individualized inquiry" employed under the ADA by the Ninth Circuit and other courts is conclusively dispelled by the Seventh Circuit's recent unambiguous adoption of that inquiry:

> We think that the individualized approach is consistent with the protections intended by the ADA. The entire point of *Arline*'s statement that a person is otherwise qualified if he is able to participate with

13. *See also Olinger*, 55 F. Supp. 2d at 934 ("The USGA does not appear to challenge the reasonableness of Mr. Olinger's requested accommodation in a general sense, and the golf cart has become so ubiquitous in the sport that any such challenge would seem doomed.").



> the aid of reasonable accommodations is that some exceptions ought to be made to general requirements to allow opportunities to individuals with disabilities.

*Washington*, 181 F.3d at 851. Petitioner is suggesting that a few months later the *Olinger* panel rejected this holding without even citing *Washington* or acknowledging its departure from prior case law. Even if petitioner were correct that *Olinger* rejected " 'individualized determination' " (Pet. at 22), the conflict would be between different panels of the same circuit and should be resolved by the Seventh Circuit. *See, e.g., Davis v. United States*, 417 U.S. 333, 340 (1974).

Subsequent to *Martin* and *Olinger*, the United States District Court for the Western District of Texas entered a preliminary injunction under Title III of the ADA requiring the USGA to permit a professional golfer suffering from Post Polio Syndrome to use a cart in the United States Senior Open and its qualifying round. *See Jones v. United States Golf Ass'n*, Civ. No. A-00-CA-278 JN (W.D. Tex. June 15, 2000), App. 64a-67a. The court concluded that "[u]pon review of the ADA and the relevant cases, particularly *Martin* . . . *Olinger* . . . and *Johnson v. Gambrinus Co.*, 116 F.3d 1052 (5th Cir. 1997), the Court finds that Plaintiff has demonstrated a substantial likelihood of success on the merits." Referencing *Martin* and *Olinger* together, the *Jones* court never suggested any inconsistency existed between those circuit court decisions.

Simply stated, it is reasonable to expect that if the Seventh Circuit, the Ninth Circuit, the district court in *Olinger* or the district court in *Jones* had perceived a conflict between *Martin* and *Olinger*, at least one of those courts would have said so.

### C. This Case Does Not Have Far-Reaching Implications

While petitioner perfunctorily declares that the Ninth Circuit's decision may have far-reaching consequences for professional sports (Pet. at 24-25), in reality the decision is a fact-specific ruling with no general application beyond its effect on the litigants, and arguably the small group of professional golfers who compete in PGA-sponsored golf tournaments. The Seventh Circuit noted in *Olinger* that since 1986 only eleven golfers have requested permission to use a cart in the U.S. Open — fewer than one a year. *Olinger*, 205 F.3d at 1003. Moreover, petitioner does not dispute that the group of individuals who possess the talent to compete even in the PGA's qualifying rounds is minuscule. App. 48a ("The Tour contends that . . . only very few golfers possess the requisite skills to become members of the Tour and compete at its events").

Petitioner contends that the modification requested by Mr. Martin will fundamentally alter PGA golf without ever considering the nature and extent of his disability — facts it deems irrelevant. *Id.* at 13a ("PGA has steadfastly declined to consider Martin's condition in adhering to its position"). Having refused even to look at Mr. Martin's medical records, petitioner conclusorily asserts that the case-by-case evaluation of disability mandated by the ADA would not result in "reliable" determinations of whether an individual "might obtain an unfair advantage." Pet. at 22. First, organizations across the country are complying with the ADA by consulting physicians and medical records to determine how persons with disabilities can reasonably be accommodated so that they may fully participate in various aspects of life. *See, e.g., Rascon v. U.S. West Comm., Inc.*, 143 F.3d 1324, 1327 (10th Cir. 1998) (discussing communications between U.S. West and employee's physicians in attempting to accommodate employee's post-traumatic stress); *Davis v. Lockheed Martin Operations Support*, 84 F. Supp. 2d 707, 712 (D. Md. 2000) (employer complied with ADA where it engaged in extensive communications with employee about her disability and provided



her with every accommodation her doctor said she needed); *Darian v. University of Massachusetts Boston*, 980 F. Supp. 77, 88 (D. Mass. 1997) (school met its obligation to make reasonable accommodation to disabled student under ADA by, *inter alia*, consulting doctor).

Moreover, as the Ninth Circuit noted, "[n]othing in the record establishes that an individualized determination would impose an intolerable burden on PGA." App. 14a. Petitioner fails to acknowledge that it already makes these individualized determinations pursuant to a medical extension rule for PGA members who miss certain events because of a medical condition. Its Commissioner testified that the PGA reviews a PGA or Nike Tour player's medical condition — which petitioner refused to do in Mr. Martin's case — and generally accepts a treating physician's conclusion that the player missed tournament play for medical reasons. Petitioner then permits this *temporarily* disabled player to return to the Tour (to the extent determined by a formula) *without having to return to Q School,* which petitioner concedes gives the exempt player an advantage on the basis of disability over those who must qualify.[14] Resp't App. 26a-27a. Thus, petitioner is already evaluating the medical condition of golfers and is willing to make judgments about the effect of even a temporary disability on the ability to play for one of its own. The Ninth Circuit correctly held that the ADA prohibits petitioner from refusing to exercise its demonstrated ability to evaluate golfers with disabilities when the request is from a golfer seeking to play on a tour.

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14. Petitioner's speculative hypotheticals about golfers who do not have a disability but who are not at their physical best on a given day (Pet. at 23) are entirely beside the point. The ADA does not protect individuals with temporary ailments, and does not cover the average person ill from the flu or incapacitated by short term surgery for a hangnail. 29 C.F.R. § 1630.2(j); 29 C.F.R. pt. 1630, app. § 1630.2(j) (interpreting § 1630.2(j)).

This case simply does not present any issue of national importance warranting this Court's review. Rather, the decision reflects the proper application of settled legal principles to a fully developed factual record unique to Mr. Martin.

Finally, even if the petition could be deemed to raise an issue that may ultimately warrant review, the broader significance and recurring nature of any issue presented by the Ninth Circuit's decision are far from established. Accordingly, sound judicial administration supports this Court awaiting further developments in the lower courts to allow the Court to (a) ascertain whether any national issue warranting a writ exists and (b) properly frame the nature and extent of any such issue. *See, e.g., McCray v. New York*, 461 U.S. 961, 963 (1983) (certiorari denied where issue requires "further study" in lower courts "before it is addressed by this Court").

## CONCLUSION

For all of the foregoing reasons, the petition should be denied.

Respectfully submitted,

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# APPENDIX

## APPENDIX A — EXCERPTS FROM TRIAL TRANSCRIPT

[commencing at page 21]

Argument – Defendant

* * *

THE COURT: Well, if you are exempt from the ADA, you are also exempt from the Civil Rights Act, correct?

MR. MALEDON: That's correct. They are one and the same. The test is the same, and that is correct.

THE COURT: And not that the PGA Tour would ever do this, but hypothetically, then, you would be arguing that you could lawfully ban golfers based on race or religion?

MR. MALEDON: Any private organization unfortunately, Your Honor, can do that, and the PGA Tour has never done that.

THE COURT: I'm not saying you did or you would.

MR. MALEDON: Yes.

THE COURT: But hypothetically, if the private [22] club exemption applies to you, you would also assert that you could lawfully do that.

MR. MALEDON: Your Honor is hypothetically correct that that is true as to any private organization, a country club, a — the Boy Scouts, anybody that qualifies for an exemption

as a private membership organization, that is correct, Your Honor, they are exempt from the civil rights laws. In my view that's — that's one of the unfortunate aspects of what Congress did, but that's what they did, and that's what the law is. So Your Honor is correct.

THE COURT: And you don't think that the participation of the public in the PGA Tour and what they do in terms of generating economic benefits for its members would be such that the courts would not deem PGA Tour to be private under the Civil Rights Act?

MR. MALEDON: No, Your Honor. No, Your Honor, not any more than the same thing is true with respect to the Boy Scouts and the money that they raise. I submit that the Boy Scouts of America probably have as much if not more assets than the PGA Tour, but nevertheless, the courts have held that they are a private organization exempt from the Civil Rights Act.

* * *

[76] . . . The fact of the matter is that with respect to a private membership organization and that issue, the law is clear, and, indeed, I would refer Your Honor to the ***Chicago Club*** case we cited where the court says, "The club allows nonmember guests the use of its facilities under certain conditions and under the sponsorship of a member. Members may arrange for guests to be issued a guest card



that affords them the use of club facilities for as many as 14 days." The court said that didn't take away the indicia of a private membership organization. The mere fact that you have guests is to be expected in private membership organizations.

Some of these participants I guess would fall into the category of guests, but the fact of the matter is most of the rest of them are members of one kind, and it is not unusual, as we said in our papers, Your Honor, for private clubs to have different kinds of members. Kinds of members.

Your Honor, you asked Ms. Walters about the handicapped caddie situation, and categorically I disagree. The handicapped caddie would not have to be accommodated, again, because it is not a place of public accommodation where the handicapped caddie is. It is not an area that is open to the general public.

* * *

[119] D. Jones ReD

* * *

BY MR. WISWALL:

Q. In the event of the amputation, would it be below or above?

[120] A. If it was necessary today, it would be below the knee, but there's a possibility with the changes in his knee it would eventually be above the knee, as well.

* * *

[222] E. Johnson — D

* * *

Q. Now, there may be some testimony in this case that officials of the PGA Tour can transport players who have hit a ball out of bounds or who have lost their ball back to the tee to hit their next shot and then back again.

A. Yes.

Q. Have you seen that?

A. I've seen that and been involved in that.

Q. All right. So — So it's just not that there can be shuttles between green and tee where there's a long distance, but if you've lost your ball and you are in the play of the game, right in the middle of the hole, and you've hit a 285-yard shot, you've lost your ball, you can't find it, an official can take you back by automated cart and take you back to the tee; is that correct?

A. That is correct.



Q. Then you hit your ball, and let's say that you fire this one straight down the fairway. Can the official then take you right back down to the ball that you've hit?

A. That's his discretion, but in most cases they will, yes.

* * *

[434] R. Ferris — D

* * *

Q. Now, Mr. Ferris, you were chairman of the policy board in 1997; is that correct?

A. That is correct.

Q. In 1997, Mr. Ferris, did an issue arise concerning whether competitors in the finals of the PGA Tour qualifying tournament would be required to walk?

A. That was one of the subjects that came up regarding the qualifying tournament.

Q. All right. And was it always the case, Mr. Ferris, that prior to 1997 that competitors in the PGA Tour qualifying tournament were required to walk?

A. Would you repeat that, please.

Q. Sure. Prior to 1997, sir, was it required that competitors in the PGA Tour qualifying tournament walk the course?

A. To the best of my knowledge, it was not required.

Q. All right. And what happened in 1997 at the board level, Mr. Ferris, that brought about a change in that requirement?

A. The feel was on the part of staff and was brought to [435] the board — by staff, I mean the commissioner and the staff — was brought to the board that they wanted to make some improvements to the final stages of the qualifying tournament and, to the best of their ability, to approximate playing conditions as encountered — that the players would encounter at the — out on tour, out on the PGA Tour once they got their card and they would be out on tour. And so they took a number of actions, and which the board approved, to — to create a situation where we mirrored PGA Tour-like conditions at qualifying school, and I believe that one of those actions was to cease to have the use of carts and to put in place that in the finals, I think it's the final, that you must walk.

There were a number of other things done, too.

Q. What's your understanding, Mr. Ferris, as to why competitors in the qualifying tournament in prior years were not required to walk the course?

A. It was a matter of basically practicality. And for the most part, economic practicality. The qualifying tournament is a — it starts out with 1100 people, and it's a series of tournaments and you have the first round and then you have the second round. It's a winnowing down. You start with 1100 and you winnow it down and you go to the second round. Then you go from the second round into the finals. I believe that's the series.



[436] And in many of the locations where we played the first and second rounds, the quality of the golf courses wasn't as good, the availability of caddies, not always available, hard to come by. Also from the fact, and this has been a personal concern of mine over the years, is the cost of going to qualifying school is pretty expensive, and for many fellows, they couldn't afford a caddie. It was too expensive to bring their caddie, bring them into the town and be able to pay for it.

So I believe the way they had it was you could always use a cart in those, or you could bring a caddie. You could take your choice. And that's what was done in round one, round two, and then we had this discussion about the final round. And it was, well, this is going to be the final round. Let's make it like life is out on tour. Let's make it as exactingly as life is, so the quality of the course, make sure it's meticulous, make sure we are playing at the lengths, make sure the pin positions are tough, make sure that the greens are fast and let's walk. There's a number of issues.

* * *

[490] R. Ferris — X

* * *

Q. All right. Now, I want to talk to you about the Senior Tour that you've had some experience with.

Am I right that the Senior Tour has been called by many in the sports world the most successful sports venture of the 1980s?

A. I think that's a correct term, yes.

Q. And the Senior Tour includes 78 of the most talented golfers in the world, doesn't it?

A. No. The Senior Tour includes 78 of some of the used-to-be most talented golfers in the world. They are still talented, but they are not nearly as talented as the young people that play on the regular tour or the Nike Tour.

Q. Are you saying that applies to all 78 of them?

A. I'd say it applies to the vast majority of them, yes. That's why we make the courses shorter. That's why the pin positions are in the middle of the green. That's why the rough isn't as deep. There — You know, with age, we all know that the baseball player, everybody, with age your physical prowess declines, your abilities decline. So to make the statement that you just made, which is that they are, what did you say, the finest? Could you repeat what you said?

[491] Q. The field that you field for the Senior Tour —

A. Yeah.

Q. — includes 78 of the most talented golfers in the world?

A. Well, see, I have a hard time with that. It includes people who were at one time in their career the most talented golfers in the world, and if you said that they are the most talented for their age bracket, then I'd agree with that statement.



Q. All right. Well, let's say that we included the Nike Tour and the regular tour and the Senior Tour. Would those three tours together encompass the most talented golfers in the world?

A. For their differing age brackets, yes, I'd say that's a fair statement.

Q. Now, in fact, you've publicly advertised the Senior Tour players using the slogan, These Guys Are Good.

A. They are.

Q. And when the Senior Tour started in 1980, by 1986 when you were on the Senior Player Division Board, it had grown in stature beyond all expectations; is that correct?

A. That is correct.

Q. And it had done so with players using golf carts, hadn't it?

A. That is correct, because it was a nostalgia tour.

[492] Q. It had been able to establish its stature with players using golf carts, hadn't it?

A. It was a different form of competition, yes. It was a different form of competition, where you were playing for the pleasure of playing with one of your heroes, just like people go out and play with the Cubbies in Chicago. The old Cubbies, that is.

Q. Now, the Tour had evolved by 1986 into an event that had started as two events in 1980 and by 1985 was up to 27 events; is that right?

A. To the best of my knowledge, that's correct.

Q. And during that period from 1980 to 1985 there had been no discussion in any board minutes, policy board or senior division board, about cart use, had there?

A. To the best of my knowledge, that is correct.

Q. So then it was in 1985 that ESPN first televised seven Senior Tour events, wasn't it?

A. I don't know.

Q. Well, could you look at —

A. I mean, I will accept your statement as a fact.

Q. All right.

A. I'm not —

Q. And then it was in January of 1986 that Mr. Arnold Palmer raised the issue and argued that carts should be banned, wasn't it?

[493] A. The reason it was is because that's when the tour policy board — or Senior Tour board was formed. It wasn't formed until late 1985, and so now we have an official body



whereby the players can express their feelings to a board of directors rather than up through the other form of chain of command. So things were starting to become a little more formal. Things were getting a little more organized because of this sudden wealth.

Q. Actually, in 1980 was the first time a Senior Advisory Council was organized, and at that time —

A. I think that's a Players Advisory Council.

Q. Well —

A. It had no advisory council until 1986.

Q. In 1980 there was a Senior Advisory Council, am I correct?

A. That could have been a nomenclature. I can only tell you there was no board of directors for the Senior Tour until late 1985, early 1986, at which time it was formed. I believe what's referred to there probably is the — what we now call the Players Advisory Council, which we have on all tours. And that's just composed of players, to the best of my knowledge.

Q. And then it was in — after 1985 when you got the televising of your tournaments, it was in January of 1986 that Mr. Arnold Palmer first raised the issue at a board [494] meeting and argued that carts detracted from the public image of the tour; is that correct?

A. Are you reading from something so I can just accept it without having to look at it?

Q. I was reading from Mr. Palmer's testimony.

A. Oh.

Q. Given in this case.

A. I can only tell you, having been intimately involved with Mr. Palmer, being both a business associate and a close friend, that I had no pleasure in voting against him in this matter, and he has never let me forget it. But Arnold brought the subject up in 1986 because we had a forum in which to bring it up.

Q. But what he brought up was that he thought that carts detracted from the public image of the tour, wasn't it?

A. He felt it was a physical part of the game. Arnold feels very strongly that walking is an integral physical part of the game. I should know that because he's told it to me enough times.

Q. Well, could you look at Defendant's Exhibit 115.

A. 115. Okay.

THE COURT: 115 or 116?

MS. WALTERS: I thought it was 115, Your Honor.



THE COURT: Defendant's?

MS. WALTERS: Yes.

[495] THE WITNESS: Defendant's? Defendant. Is that us? That's us. Okay. Which way does it go?

MR. WISWALL: That's you.

THE WITNESS: Okay. 116, ma'am?

BY MS. WALTERS:

Q. Just a minute. I will check.

A. Okay.

Q. No. If you could look at 115, please.

A. 115.

Q. Now, these are the minutes where Mr. Palmer first raised the issue?

A. I believe that's correct.

Q. All right. And it doesn't say anything in those minutes about Mr. Palmer wanting this to be conducted as a physical competition, does it?

A. I wish I was a speed reader.

These minutes do not reflect that, but I can tell you in the discussions I've had with Mr. Palmer over the years, that's exactly what he means. Minutes don't always completely and accurately reflect everything that took place in a meeting.

Q. Well, in the discussions you've had with Mr. Palmer over the years, has he told you his feelings that he was concerned about the public image, including television?

A. I don't recall him ever saying anything about [496] television. I recall him talking about, you know, walking is integral to the game. It's part of the game. It's a physical part. You know, walking is tiring, and the older you get, the more tiring it becomes.

Q. And have you been there when Mr. Palmer has discussed with members of the tour policy board about how the image of the PGA is affected by the appearance of these carts?

A. My memory of the conversation does not revolve around image. My memory of the conversation regards — regards the part that it's an integral, purposeful part of the game.

THE COURT: We'll never finish this case if we don't move on, unless one or the other of you agree. That is not going to happen, so I think we've exhausted this. You might move on to another area.

MS. WALTERS: Thank you.





BY MS. WALTERS:

Q. At the time you made — Mr. Palmer came forward with this proposal, you suggested that what should happen is that carts should be banned and medical exemptions given; is that correct?

A. Yes, that is correct.

Q. And you were going to allow any player with a bona fide medical certificate to use a cart; is that correct?

A. As far as I was concerned, it was even broader than [497] that. In other words, we could not afford to lose, let's say, Sam Snead or Julie Boros out there. We needed every great name we could go get, so if they said they needed a cart to complete 18 holes, they got a cart.

Q. Could you look at your minutes, again, of Exhibit 138?

A. 138.

Q. That's Defendant's Exhibit 115. I'm sorry.

A. Thank you. Yes, ma'am.

Q. On the last page?

A. Yes, ma'am.

Q. And was it a unanimous determination of the board that carts be banned except that cart use would be permitted in

Pro-Am rounds and for players with bona fide medical certificates?

A. Yes, that was, you know, a medical — yeah, that's correct.

Q. That was what the division board unanimously agreed on?

A. Right. Because we needed those fellows out there for the draw.

Q. Now, to this day, then, members of the — if someone is 50 years or older and they have a medical disability, that condition is accommodated; is that right?

A. Could you repeat that, please?

[498] Q. To this day, any player who is 50 or older and who needs a cart due to a medical disability is accommodated, am I correct?

A. No. Today on the Senior Tour, to the best of my knowledge, if they want to use a cart, they can use a cart. If they want to walk, they can walk.

* * *

[576] Casey Martin — D

A. You had two options. You either had a caddie or you took a cart. And you couldn't deviate from those two.



Q. Did it change the nature of the competition?

A. Absolutely not. It was the same game. Everyone played. And the PGA Tour made no distinction, they didn't know who rode, who didn't. It was a nonissue.

Q. All right. And then — and then at the second stage of competition, same rules, USGA?

A. USGA rules. You — you know, it was the same deal as first stage.

Q. And did it change the nature of the competition as far as you could perceive?

A. Absolutely not.

Q. Okay. And did it appear that the players with carts were given any advantage over the ones that were walking and using caddies?

A. Clearly not.

* * *

[583] * * *

BY MR. WISWALL:

Q. 1.1 states the game of golf consists of playing a ball from the teeing ground into the hole by a stroke or successive strokes in accordance with the rules.

Is that your understanding of what the game is?

A. Yes.

* * *

[722] J. Bell — D

* * *

Q. All right.

Tell the court, if you would, Ms. Bell, who it is that plays under these Rules of Golf that are promulgated by the United States Golf Association?

A. Well, these are the rules of the game, so all golfers. These are for all people who play the game.

Q. So the two amateurs that go out on the weekend to play golf together would — would play by the Rules of Golf?

A. We certainly hope so.

Q. Or a tournament that is conducted at a private country club for its members, is it your understanding that that would typically be conducted under the Rules of Golf?

A. Well, that's — that's right. If you want to play golf, you need to play by these rules.



Q. Now, you mentioned the Rules of Golf as including certain provisions that are in the appendices. Would you explain to the court what you mean by that.

A. Well, it's just the way the rules are organized. When you get to the appendices, for instance, if we look at Appendix I, the language for local rules that may be adopted by the committee in charge of the competition, this is the people that are conducting the competition.

Q. Now, let's explain that a little bit more. When you say the committee in charge of conducting the competition, [723] who precisely is it that you are talking about?

A. Well, it could be, for instance, at the — at the competition you mentioned it could be the local pro, it could be a championship committee at a club. It could be — In the instance of the United States Open Championship, it would be the United States Golf Association's championship committee. And they would define the conditions of the competition. And those conditions — There's conditions in the appendix as — in terms of there's optional conditions, and there is also language for local rules that relate to specific situations on certain courses. And it's up to this committee, under Rule 33, to define the conditions of the competition.

Q. Now, let's explore that, Ms. Bell. When a committee that is conducting a competition — and let's take the PGA Tour, for example. If the committee or the organization conducting PGA Tour events decides to adopt certain of the — the optional conditions contained in the appendix to the USGA Rules of Golf, are those still rules of golf for those competitions?

A. Once they are adopted, they certainly are. They are rules of the game being played in that competition.

* * *

[730] * * *

Q. Am I correct, Ms. Bell, that the one-ball rule and the walking requirement are optional conditions that are taken from the appendix of the USGA Rules of Golf?

A. Yes, they are listed as optional conditions under Appendix I.

Q. And the USGA in its championship events adopts its optional conditions for its events?

A. We do.

Q. Now, is it correct, Ms. Bell, that walking is required in all 13 of the USGA's championship events, or are there some in which walking is not required?

A. The two championships where walking is permissible, to use automotive transportation, is in the Senior Women's Amateur Championship and the Senior Amateur Championship.

THE COURT: And the Senior what?

THE WITNESS: The United States Senior Women's Amateur Championship and the Senior Amateur





Championship. The one that's, again, it's open to anyone, Senior Amateur Championship. The Senior Women's is only for women over the age of 50. The Senior Amateur Championship is for players over the age of 55.

* * *

[794] T. Finchem — D

* * *

Q. In the qualifying tournament in past years, sir —

A. Yes.

Q. — have competitors been permitted to use golf carts?

A. They have.

Q. And what is the reason, Mr. Finchem, that competitors in the national qualifying tournament have been permitted to use golf carts in past years?

A. Well, I think there's a couple reasons. One is that the — we get an awful lot, in the thousands, of people who aspire to play the PGA Tour, who enter the qualifying tournament at the local level. Administratively it has been determined over the years that it's impossible to require them, all of those players, to — to get caddies, for the combined reasons of the availability of that number of caddies at the first and second stage of qualifying, and, I suppose, the cost of caddies, as well, plays some [795] role in that, as well.

In addition to that, the — in the early stages of qualifying, the competition is to go to a higher stage. And frankly, we get a lot of people who enter the qualifying tournament who have a quality of game that is not going to take them on to the next stage, and we view it as a winnowing-out process, if you will, but those are the basic reasons.

Q. Now, in this past year, 1997, Mr. Finchem, did the PGA Tour make a decision to alter the requirement or at least change the procedure with respect to use of golf carts, at least in the finals of the qualifying tournament?

A. Yes, we did.

* * *

[832] T. Finchem — X

* * *

Q. All right. Now, since 1988, when you did come with the Tour as an employee, am I correct that the only board meeting minutes in which carts or walking have been discussed at all were the minutes that have been offered into evidence of the March 1997 meeting, when the changes were made in the Q school format?

A. As far as I know.

Q. And you have not been able to find a single document where the defendant has put in writing, prior to 1998, that walking is a fundamental part of its tournaments, have you?



A. A document that uses those words?

Q. Well, anything that the defendant has produced which either states or in some way — whether it states directly or indirectly, that walking is a fundamental part of the tournaments it produces?

A. I don't know a document that says that, no.

Q. Now, you know that the game of golf, the essentials, the definition of the game of golf, is stated in the rules at Rule 1-1, don't you?

[833] A. Yes.

Q. And that definition of the game of golf, in its essentials, has been adopted by the PGA Tour, Inc. for its tournaments, hasn't it?

A. We accept the USGA Rules of Golf, and we reserve the right to amend them as we might see fit, which we have done from time to time.

Q. Right. But you haven't amended this definition of the game, have you?

A. No, we have not.

* * *

*Appendix A*

[839] * * *

Q. And you require that to the extent possible the conditions in the open qualifying shall be comparable to those of the tournament site in conditioning, speed of greens, et cetera, don't you?

A. If possible, that's correct.

Q. And that is so that you can test golfing skill, isn't it?

A. As best as we can, yes.

Q. But you don't require in that document that the golfers in the open and sectional qualifying tournaments walk, do you?

A. No, we don't.

Q. You could include that requirement if walking were an important part of your competition, couldn't you?

A. Well, we could. But it's covered under the rules of competition.

Q. Well, professional golfers do not have to walk in Monday and sectional qualifying tournaments, do they?

A. We allow them to ride carts in Monday qualifying, yes.

* * *



*Appendix A*

[840] * * *

Q. So you're saying that every Notice to Competitors for [841] a qualifying event would say that you don't have to walk?

A. No, I didn't say that. I said if the tournament committee determined that there was going to be — there was no requirement to walk in an open qualifying, just like the second stage — first or second stage of the qualifying school, it would most likely be in the Notice to Competitors, if you're searching for where it will appear. I will tell you that we do not require walking most weeks in opening qualifying, just like we don't require the first and second stage of the qualifying tournament. If that's what you're searching for, that's true.

* * *

[845] * * *

Q. All right. And you take in about 1200 applications, and then you winnow those down and the top 168, as long as they finish the Q school, will be members of either the regular or the Nike Tours, is that right?

A. What was the number you used?

Q. Down to 168.

A. Yes, they would be members on some level of access, that's correct.

Q. All right. The highest 37 plus ties become members of the regular Tour, and then all the remainder become members of the Nike Tour, just with differing rights, depending upon where they fall?

A. Differing levels of access, that's correct.

Q. All right.

So once the player makes it to the final stage, where you're down to those 168, he knows that he's on one tour or the other?

A. That's correct.

* * *

[870] * * *

Q. And on the medical extension that you talked about, you could make these people who have to be — who miss playing in some tournaments due to their medical condition, you could make — you could make them come back to Q school [871] and demonstrate that they can play at that level, couldn't you?

A. Well, we could. Some of them still have to. But we also provide them, if they're an exempt player, we provide them the ability to pick up some of the access they lost by virtue of the injury.



Q. And before you put that into effect they did have to come back to Q school and prove themselves?

A. Well, they had to do whatever they had to do. There was no — there was no additional access provided them because of an injury.

Q. Right. But normally they would have had to be in one of the other either top 125 money-makers, let's use the regular PGA Tour, they would have to be in the top 125, and if they couldn't be because of their injury, their only way back in was to go to Q school?

A. That's correct.

Q. And if they didn't have to go to Q school, that would give them an advantage over other players who did have to go to Q school, wouldn't it?

A. Well, I guess so. . . .

* * *

[873] * * *

A. I think walking to certain players in certain circumstances can be an advantage over riding the cart, yes.

Q. Shot-making is obviously the primary skill of professional golfers.

*Appendix A*

A. I think from a skill standpoint, you'd have to admit that what — the key element of skill in the game of golf is shot-making, yes.

Q. Golf carts have become a part of the game of golf in the last 30 to 40 years.

A. Absolutely.

* * * *



## APPENDIX B — EXCERPTS FROM ALL-EXEMPT TOUR PRIORITY RANKINGS

## ALL-EXEMPT TOUR PRIORITY RANKINGS

Each PGA TOUR player has earned a position on the priority ranking system that will be used to select tournament fields. The complete ranking system, in order of priority, is as follows:

1. Winners of PGA Championship or U.S. Open prior to 1970 or in the last 10 calendar years. (Beginning in 1998, this is a five-year exemption.)

| | |
|---|---|
| Paul Azinger | Tom Kite |
| Mark Brooks | Gene Littler |
| Jack Burke | Davis Love III |
| Billy Casper | Orville Moody |
| John Daly | Bobby Nichols |
| Steve Elkington | Jack Nicklaus |
| Ernie Els | Arnold Palmer |
| Dow Finsterwald | Corey Pavin |
| Jack Flec | Gary Player |
| Raymond Floyd | Nick Price |
| Al Geiberger | Bob Rosburg |
| Wayne Grady | Jeff Siuman |
| Lionel Herbert | Sam Snead |
| Hale Irwin | Payne Stewart |
| Don January | Curtis Strange |
| Lee Janzen | Lee Trevino |
| Steve Jones | Ken Venturi |

*Appendix B*

2. Winners of the THE PLAYERS Championship in the last 10 calendar years.
(Beginning in 1998, this is a five-year exemption.)

Fred Couples
Jodie Mudd
Mark McCumber
Greg Norman

3. Winners of the NEC World Series of Golf in the last 10 calendar years.
(Beginning in 1998, this is a three-year exemption.)

Fulton Allem
David Frost
Phil Mickelson
Tom Purtzer
Mike Reid
Craig Stadler

4. Winners of the Masters Tournament in the last 10 calendar years.
(Beginning in 1998, this is a five-year exemption.)

Ben Crenshaw
Nick Faldo
Sandy Lyle
Tiger Woods

5. Winners of the British Open in the last 10 calendar years (1990-present).
(Beginning in 1998, this is a five-year exemption.)

Tom Lehman
Justin Leonard

6. THE TOUR Championship winners of the last three years, beginning with the 1998 winner.



*Appendix B*

7. The leader in PGA TOUR official earnings in each of the last five calendar years.

8. Winners of PGA TOUR cosponsored or approved events (except team events) within the last two calendar years, or during the current year; winners receive an additional year of exemption for each additional win, up to five years.

Stuart Appleby
Phil Blackmar
Guy Boros
Michael Bradley
Billy Ray Brown
Mark Calcavecchia
Stewart Cink
John Cook
David Duval
Brad Faxon
Ed Fiori
Fred Funk
Jim Furyk
Jim Gallagher, Jr.
Bill Glasson
Paul Goydos
Dudley Hart
Tim Herron
Gabriel Hjerstedt
Scott Hoch
Peter Jacobsen
Billy Mayfair
Scott McCarron
Frank Nobilo
Mark O'Meara
David Ogrin
Loren Roberts
Clarence Rose
Vijay Singh
Paul Stankowski
Steve Stricker
David Toms
Tom Walston
D.A. Weibring
Willie Wood

9. Members of the last-named U.S. Ryder Cup team.

Jeff Maggert

*Appendix B*

10. Leaders in official PGA TOUR career earnings, as follows:

    a. Players among the Top 50 in career earnings as of the end of the preceding calendar year may elect to use a one-time, one-year exemption for the next year.

    John Huston
    Scott Simpson
    Fuzzy Zoeller

    b. Players among the Top 25 in career earnings as of the end of the preceding calendar-year may elect to use this special exemption for a second year, provided that the player remains among the Top 25 on the career money list.

    Chip Beck
    Bruce Lietzke

11. Sponsor exemptions (a maximum of eight, which may include amateurs with handicaps of two or less), on the following basis:

    a. Not less than two sponsor invitees shall be PGA TOUR Regular, Life or Past Champion members not otherwise exempt.

    b. Not less than two of the top 50 finishers from the last Qualifying Tournament, if not all of them can otherwise be accommodated (Note: PGA TOUR



*Appendix B*

members may receive unlimited number of sponsor invitations. Non-TOUR members may receive maximum of five per year.)

12. Two foreign players designated by the Commissioner.

13. The current PGA Club Professional Champion for a maximum of three open events, in addition to any sponsor selections.

    Bruce Zabriski

14. PGA Section Champion of the Section in which the tournament is played.

15. Two members of the PGA Section in which the tournament is played, who qualify through sectional qualifying competitions.

16. Four low scorers at Open Qualifying, which shall normally be held on Monday of tournament week.

17. Past champions of the particular event being contested that week, if co-sponsored by the PGA TOUR and the same tournament sponsor (except for Team events), as follows:

    Winners prior to July 28, 1970 — unlimited exemptions for such events.

    Winners after July 28, 1970 — ten years of exemptions for such events.

* * * *

## APPENDIX C — EXCERPTS FROM 1997 PGA TOUR QUALIFYING TOURNAMENT

### 1997 PGA TOUR QUALIFYING TOURNAMENT

**Grenelefe Golf and Tennis Resort, Grenelefe, FL**
**West Course — Par: 36-36 — 72 Yards: 7,301**
**South Course — Par: 36-35 — 71 Yards: 6,717**

**December 3-8, 1997**

Approximately 1.200 applications were received, with 11 first-stage regionals and six second-stage regionals held to reduce the field to 168 players for the final qualifying stage, which was six rounds with no cut.

There were two weather delays during the tournament. The second-round start time on Thursday was delayed from 8:30 a.m. until noon due to rain, and the 8:30 a.m. start time for Sunday's fifth round was delayed 30 minutes due to frost.

The top-35 players and ties (a total of 38) received their PGA TOUR cards for 1998. The next 77 finishers earned fully exempt NIKE TOUR cards for 1998, and the balance of the field earned conditional NIKE TOUR status for 1998.

The following players earned their 1998 PGA TOUR cards:

| | | | |
|---|---|---|---|
| 1. | Scott Verplank | 66-64-67-70-69-71 | 407 |
| 2. | Blaine McCallister | 67-70-68-72-66-70 | 413 |
| 3. | Lee Porter | 70-71-67-69-71-68 | 416 |
| 4. | Stephen Ames | 70-68-69-69-70-70 | 416 |
| 5. | Spike McRoy | 69-71-69-71-68-69 | 417 |





| | | | |
|---|---|---|---|
| 6. | Franklin Langham | 72-71-68-68-66-72 | 417 |
| 7. | Sonny Skinner | 71-70-66-73-69-69 | 418 |
| 8. | Jim McGovern | 75-66-68-69-72-68 | 418 |
| 9. | Bob Gilder | 67-72-69-74-68-69 | 419 |
| 10. | John Riegger | 70-69-70-72-68-70 | 419 |
| 11. | Bruce Fleisher | 69-72-69-69-71-69 | 419 |
| 12. | Richard Coughlan | 73-66-70-70-71-69 | 419 |
| 13. | Vance Veazey | 73-68-66-71-71-70 | 419 |
| 14. | Guy Hill | 69-67-69-73-69-72 | 419 |
| 15. | Hugh Royer III | 67-71-69-70-71-71 | 419 |
| 16. | Kent Jones | 72-70-67-64-71-75 | 419 |
| 17. | Niclas Fasth | 73-67-74-72-63-71 | 420 |
| 18. | Kevin Wentworth | 72-69-68-73-68-70 | 420 |
| 19. | J.P. Hayes | 71-69-67-74-66-73 | 420 |
| 20. | Tim Conley | 70-73-73-71-69-65 | 421 |
| 21. | Jim Estes | 71-72-71-71-70-66 | 421 |
| 22. | Esteban Toledo | 71-72-70-70-66-72 | 421 |
| 23. | Steve Jurgensen | 74-67-67-73-69-71 | 421 |
| 24. | Keith Nolan | 71-70-68-70-70-72 | 421 |
| 25. | Tom Pernice, Jr. | 71-69-67-70-70-74 | 421 |
| 26. | Clark Dennis | 71-72-69-74-66-70 | 422 |
| 27. | John Morse | 74-70-70-72-66-70 | 422 |
| 28. | Craig Barlow | 76-67-70-71-71-67 | 422 |
| 29. | Bradley Hughes | 70-73-67-74-68-70 | 422 |
| 30. | Dicky Pride | 72-68-69-72-69-72 | 422 |
| 31. | Mike Weir | 71-68-69-72-71-71 | 422 |
| 32. | Jeff Gallagher | 71-67-69-73-69-73 | 422 |
| 33. | Bob Friend | 76-69-76-69-70-63 | 423 |
| 34. | Iain Steel | 68-75-72-72-67-69 | 423 |
| 35. | Mark Wurtz | 75-69-66-76-67-70 | 423 |
| 36. | Bobby Gage | 69-77-66-69-70-72 | 423 |
| 37. | Lan Gooch | 69-68-70-71-73-72 | 423 |
| 38. | Tim Loustalot | 71-71-69-68-69-75 | 423 |

## APPENDIX D — CONSOLIDATED STATEMENTS OF ACTIVITY OF THE PGA TOUR, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF ACTIVITY
PGA TOUR, INC. and SUBSIDIARIES

(in thousands)

| | 1995 Actual | 1996 Actual | 1997 Projected |
|---|---|---|---|
| **REVENUES** | | | |
| Television Revenues | $ 86,967 | $ 95,575 | $103,259 |
| Tournament Revenues | 90,938 | 101,395 | 104,851 |
| Tournament Players Clubs | 69,275 | 76,423 | 90,810 |
| Marketing and Promotions Revenues | 24,202 | 29,053 | 32,380 |
| Interest and other income | 13,027 | 15,112 | 12,742 |
| **TOTAL REVENUES** | **284,409** | **317,558** | **344,042** |
| **EXPENSES** | | | |
| Television Costs and Expenses | 32,367 | 32,532 | 33,873 |
| Tournament Operations Expenses | 27,496 | 33,210 | 37,526 |
| Tournament Players Clubs | 58,097 | 64,620 | 78,678 |
| Marketing and Promotions Expense | 8,996 | 9,367 | 9,231 |
| Interest Expense | 4,004 | 2,930 | 3,205 |
| **TOTAL EXPENSES** | **130,960** | **142,659** | **162,513** |
| **REVENUES OVER EXPENSES FROM OPERATIONS** | **153,449** | **174,899** | **181,529** |





| | | | |
|---|---|---|---|
| Board Designated Funds Utilized (Reserved) for Allocations (Net) | 4,286 | (922) | (2,545) |
| **NET REVENUES AVAILABLE FOR ALLOCATIONS** | **157,735** | **173,977** | **178,984** |
| **ALLOCATIONS TO PLAYERS AND SPONSORS** | | | |
| Players Prize Money/ Sponsor Allocations | 131,519 | 142,148 | 152,084 |
| Player Retirement Plan contributions: | | | |
| PGA TOUR | 5,000 | 5,500 | 6,000 |
| Senior PGA TOUR | 3,750 | 4,000 | 4,500 |
| Retirement Plan Earnings | 6,060 | 6,045 | 5,875 |
| **TOTAL ALLOCATIONS** | **146,329** | **157,693** | **168,459** |
| **REVENUES OVER ALLOCATIONS AND EXPENSES FROM OPERATIONS** | 11,406 | 16,284 | 10,525 |
| State and Federal Income Taxes | (4,027) | (3,307) | (3,348) |
| **REVENUES OVER EXPENSES AND ALLOCATIONS ADDED TO UNDESIGNATED UNDISTRIBUTED NET ASSETS** | **$ 7,379** | **$ 12,977** | **$ 7,177** |

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| | Year Ended December 31 | |
|---|---|---|
| | 1996 | 1995 |
| | in thousands | |
| **Revenues:** | | |
| Television revenues | **$ 95,575** | $ 86,967 |
| Tournament revenues | **100,590** | 89,833 |
| Tournament Players Clubs | **76,423** | 69,275 |
| Marketing and promotions revenues | **28,447** | 21,506 |
| Interest and other income | **16,536** | 13,312 |
| **Total Revenues** | **317,571** | 280,393 |
| **Expenses:** | | |
| Television costs and expenses | **34,012** | 34,124 |
| Tournament operations | **34,724** | 29,248 |
| Tournament Players Clubs | **64,620** | 58,097 |
| Marketing and promotions expenses | **7,141** | 6,664 |
| Interest and financing expense | **2,162** | 2,827 |
| **Total Expenses** | **142,659** | 130,960 |
| Revenues over expenses from operations | **174,912** | 149,433 |
| Provision for income taxes | **3,307** | 4,027 |
| **Net Revenues over Expenses** | **171,605** | 145,406 |



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| | | |
|---|---|---|
| Board designations for future Player and Sponsor purposes. | | |
| Additions to designated undistributed net assets | **(7,906)** | (2,049) |
| Allocations for designated purposes | **6,971** | 10,351 |
| | **170,670** | 153,708 |
| **Allocations to Players and Sponsors:** | | |
| Players prize money and Sponsor allocations | **142,148** | 131,519 |
| Player Retirement Plans contributions | **9,500** | 8,750 |
| Player Retirement Plans earnings | **6,045** | 6,060 |
| **Total Allocations to Players and Sponsors** | **157,693** | 146,329 |
| Change in undesignated net assets from operations | **$ 12,977** | $ 7,379 |

## APPENDIX E — EXCERPTS FROM APPLICATION TO ENTER 1997 PGA TOUR QUALIFYING TOURNAMENT (FOR PGA AND NIKE TOUR)

### APPLICATION TO ENTER
### 1997 PGA TOUR QUALIFYING TOURNAMENT
### (FOR PGA AND NIKE TOUR)
### CONDUCTED BY THE PGA TOUR

**First Qualifying Stage (72 Holes Scheduled)**
**Second Qualifying Stage (72 Holes Scheduled)**
**Final Qualifying Stage (108 Holes Scheduled)**

The undersigned hereby applies to enter the 1997 PGA TOUR Qualifying Tournament. Although membership in the PGA TOUR and NIKE TOUR is based principally on this competition, PGA TOUR reserves the right to apply other reasonable criteria (including but not limited to, character, conduct, financial responsibility, etc.) to all applicants for membership. Based on all such factors, the PGA TOUR in its discretion will determine whether to extend the undersigned an invitation to join the applicable Tour.

If the undersigned successfully qualifies and accepts such invitation to join the PGA TOUR or NIKE TOUR, he shall pay the fees and dues and abide by the *Tournament Regulations* of the PGA TOUR or NIKE TOUR, as applicable, in consideration of all the rights and privileges of such membership.

The undersigned also understands that this application may at any time be rejected (including during the Qualifying Tournament) by the PGA TOUR. Conduct unbecoming a professional or noncompetitive performance in previous



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PGA TOUR Qualifying Tournaments or NIKE TOUR Qualifying Tournaments can be a basis for the rejection of an application.

**The PGA TOUR reserves the right to change the Qualifying Tournament format and schedule of play as presently contemplated.**

### I. FORMAT AND SCHEDULE OF PLAY

Competition will be in three stages, at stroke play:

A. First Qualifying Stage — 72 holes scheduled — for all applicants except the following, who are automatically exempt into the Second Qualifying Stage:

1. 1997 PGA TOUR members.

2. Former winners of Tournament Players Series, Ben Hogan Tour or NIKE TOUR tournaments.

3. Those who have earned $100,000 or more in official PGA TOUR prize money (as determined in accordance with *PGA TOUR Tournament Regulations*) in their careers as of September 26, 1997.

4. Those who have made 25 or more cuts in tournaments awarding official PGA TOUR prize money (as determined in accordance with *PGA TOUR Tournament Regulations*) in their careers as of September 26, 1997.

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5. Those finishing 26-55 on the final 1997 Official NIKE TOUR Money List (as defined in the *NIKE TOUR Tournament Regulations*).

6. Winners of PGA Section Championships from September 20, 1996 through September 26, 1997.

7. PGA Assistant Professionals originally qualified to play in the 1997 Foot Joy Titleist PGA Assistants Championship.

8. The low 50 scores and ties from the 1997 PGA Club Professional Championship.

9. Professionals making the 36-hole cut in the 1997 PGA Championship.

10. The leading fourth, fifth and sixth available players, to a limit of 25th position, on each of the three international tours (PGA European Tour, Japan PGA and Australasian Tour) applicable official money list or order of merit as of September 26, 1997.

Field sizes will be approximately 78 players, with no reduction of fields scheduled. The number of players advancing from each First Qualifying Stage site will be on a pro rata basis (i.e., an approximately equal percentage of players from each site will advance), and will be announced during the First Qualifying Stage. PGA TOUR reserves the right to add players to the field of the Second Qualifying Stage if it deems it appropriate.



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| **Dates** | **Site** | **Course or Club** |
|---|---|---|
| Tues – Fri | Dayton, NV | Dayton Valley CC |
| *Oct. 14-17* | Jackson, MS | Colonial CC (Deerfield Course) |
| | Murfreesboro, TN | Old Fort GC |
| | Pensacola, FL | Pensacola CC |
| | Wilmington, NC | Porters Neck Plantation |
| | Savannah, GA | Southbridge GC |
| Tues – Fri | Llano, CA | Crystalaire CC |
| *Oct. 21-24* | Valrico, FL | Bloomingdale GC |
| | Bogart, GA | Jennings Mill GC |
| | West Palm Beach, FL | Bear Lakes CC (Lakes Course) |
| | Richmond, TX | Longwood GC |

B. Second Qualifying Stage — 72 holes scheduled — After the First Qualifying Stage, the field for the Second Qualifying Stage will be approximately 468 players, including all those automatically exempt for the Second Qualifying Stage and any other players which PGA TOUR deems should be added to the Second Qualifying Stage. After entries of the exempt players are processed, Second Qualifying Stage preferences will be based upon First Qualifying Stage finish positions and in the order described to determine alternates under Section IV.B.3. All applicants will participate in this qualifying stage except the following who are automatically exempt into the Final Qualifying Stage.

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1. Those applicants among the top 25 finishers immediately after the 125th position on the final 1997 Official PGA TOUR Money List (as defined in the PGA TOUR *Tournament Regulations*).

2. Those applicants finishing 16-25 on the final 1997 Official NIKE TOUR Money List (as defined in the NIKE TOUR *Tournament Regulations*).

3. The leading first, second and third available players, to a limit of 10th position, on each of the three international tours (PGA European Tour, Japan PGA and Australasian Tour) applicable official money list or order of merit as of September 26, 1997.

Field sizes shall be limited to 78 players with no reduction of fields scheduled. The number of players advancing from each Second Qualifying Stage site into the First Qualifying Stage will be on a pro rata basis, and announced during the Second Qualifying Stage. PGA TOUR reserves the right to add players to the field of the First Qualifying Stage if it deems it appropriate.



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| **Dates** | **Site** | **Course or Club** |
|---|---|---|
| Tues-Fri | Florence, SC | The CC of South Carolina |
| *Nov. 11-14* | Kingwood, TX | Deerwood GC |
| | Panama City, FL | Hombre CC |
| Tues-Fri | Rio Rico, AZ | Rio Rico Resort |
| *Nov. 18-21* | Seaside, CA | Bayonet Black Horse (Bayonet Course) |
| | Gull Shores, AL | Kiva Dunes |

C. Final Qualifying Stage — 108 holes scheduled — After the Second Stage, the field for the Final Qualifying Stage will be approximately 168 players, including applicants automatically exempt under Section 1.B.3. Play will be on the Grenelefe Golf & Tennis Resort West and South Courses (Haines City, Florida). Dates will be Wednesday through Monday, December 3-8, 1997. The field will play 108 holes with no cut. PGA TOUR reserves the right to add players to the field if it deems it appropriate. Groupings for the first and second rounds will alternate courses; groupings for the third and fourth rounds will be done based on scores, alternating courses; groupings for the fifth and sixth rounds will be done based on scores, alternating courses.

## II. PGA TOUR MEMBERSHIP

PGA TOUR memberships for 1998 will be awarded to the lowest 35 finishers and any tying for 35th position after the conclusion of play in the Final Qualifying Stage.

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Ties among those earning PGA TOUR membership will be broken for the purpose of ranking (i.e., determining a Qualifying Tournament player's initial number on the 1996 eligibility list) by matching combined sixth and fifth round scores. Ties remaining after a match of combined sixth and fifth round score will be broken by matching 18-hole scores from the contestants' last completed round on the Grenelefe West Course. Ties remaining after a match of rounds will be broken by matching hole scores, beginning with the last completed hole at Grenelefe West Course. (PGA TOUR reserves the right to periodically reevaluate Qualifying Tournament members in 1998, and to reorder the ranking based on competitive performance during the 1998 season). If fifth and sixth rounds cannot be completed, the numbering would be consistent with Section VII Postponements and Cancellations.

Access to PGA TOUR cosponsored tournaments is determined by a player's finish position at the PGA TOUR Qualifying Tournament and is subject to change as a result of the periodic reshuffle, which benefits those players who perform best.

In 1996, 39 cosponsored tournaments awarded official prize money. Listed below are the number of such tournaments certain positions from the initial numbering and during the periodic renumberings were able to play in 1996.



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| CATEGORY POSITION | NUMBER OF 1996 TOURNAMENTS |
|---|---|
| QT #1 | 33 of 39 |
| QT #15 | 30 of 39 |
| QT #30 | 27 of 39 |
| QT Last Position | 21 of 39 |

A minimum of $500,000 in prize money will be distributed among those earning PGA TOUR and fully exempt NIKE TOUR memberships.

## III. NIKE TOUR MEMBERSHIP

Following the lowest 35 finishers and ties who earn PGA TOUR memberships, the next number of finishers nearest 70 will earn fully exempt 1998 NIKE TOUR memberships and all remaining players in the Final Qualifying Stage and alternates for the Final Qualifying Stage will earn nonexempt 1998 NIKE TOUR memberships. Ties among those earning NIKE TOUR membership will be broken for the purpose of ranking (i.e., determining a player's initial number on the 1998 eligibility list) by matching combined fifth and sixth round scores. Ties remaining after a match of combined sixth and fifth round score will be broken by matching 18-hole scores from the contestants' last completed round on the Grenelefe West Course. Ties remaining after a match of rounds will be broken by matching hole scores, beginning with the last completed hole at Grenelefe West. Alternates will be ranked in the order in which they are alternates for the Finals, as described in Section IV.B.3 of this application.

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## IV. WITHDRAWALS; SUBSTITUTIONS AND REALLOTMENT OF SPOTS

A. Applicants withdrawing prior to their first applicable stage of competition **MUST** inform PGA TOUR of withdrawal by telephone by the applicable deadline listed below in order to receive a refund of entry fee.

*NOTE*: Only withdrawals made personally by the applicant will be accepted. Any attempt to withdraw an applicant by someone other than the applicant himself will *not* be accepted. Applicant must also state his entry confirmation number when withdrawing from Qualifying Tournament.

All applicants are *REQUIRED* to substantiate verbal withdrawal in writing in order for their refund to be processed. *REFUNDS WILL NOT BE PROCESSED UNTIL WRITTEN SUBSTANTIATION OF WITHDRAWAL IS RECEIVED*. A processing fee of $100 will be automatically deducted from **ALL** withdrawal refunds. Notwithstanding any prior written notice of withdrawal furnished by applicant, once an applicant begins play in any stage of the Qualifying Tournament, he will be ineligible to receive such refund.



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***WITHDRAWAL DEADLINE***

First Qualifying Stage — 5:00 p.m. EDT Tuesday, October 7, 1997.

Second Qualifying Stage — 5:00 p.m. EST Tuesday, November 4, 1997.

Final Qualifying Stage — 5:00 p.m. EST Tuesday, November 25, 1997.

B. Alternates from each site will be determined by hole-by-hole playoffs held immediately following the conclusion of play at each site to determine the order for alternates. Five alternates will be determined from each First Qualifying Stage site and three alternates will be determined from each Second Qualifying Stage site. Substitutions and reallotment of positions for alternates from withdrawals will be made as follows:

1. If a successful First Qualifying Stage player withdraws prior to such player beginning play in the Second Qualifying Stage, the first available alternate from the same First Qualifying Stage site will be substituted.

2. If a successful Second Qualifying Stage player withdraws prior to such player beginning play in the Final Qualifying Stage, the first available alternate from the same Second Qualifying Stage site will be substituted.

3. If an applicant automatically exempt into the Second Qualifying Stage withdraws before all players have begun play in the First Qualifying Stage, the position will be included in the positions to be allocated to the First Qualifying Stage sites on a pro rata basis.

   If a player automatically exempt into the Second Qualifying Stage withdraws after all players have begun play in the First Qualifying Stage (a "Second Qualifying Stage Automatically Exempt Withdrawal"), the position reserved will be reallotted to the first available alternate from the various First Qualifying Stage sites determined in accordance with the following procedure.

   Before play has concluded at the first to occur of the First Qualifying Stages, Tournament Competition personnel at PGA TOUR Headquarters will conduct a blind clinical drawing to determine the order in which the alternates from the First Qualifying Stage sites will replace Second Qualifying Stage Automatically Exempt Withdrawals. In conducting such drawing, each First Qualifying Stage site will be written on an index card and all cards will be shuffled. Cards will then be drawn on a blind basis one by one for purposes of determining the 11 First Qualifying Stage sites in order. The first alternate from the first First Qualifying Stage site drawn will be the first alternate to replace a Second Qualifying Stage Automatically Exempt





Withdrawal, the first alternate from the second First Qualifying Stage site drawn with be the second alternate to replace a Second Qualifying Stage Automatically Exempt Withdrawal, and so on through the first alternate from the First Qualifying Stage site which is chosen 11th. Alternates 12 through 22 will be the second available alternates from the various First Qualifying Stage sites in the order drawn, and alternates 23 through 33 will be the third available alternates from the various First Qualifying Stage sites in the order drawn and so on.

4. If an applicant automatically exempt in the Final Qualifying Stage withdraws before all players have begun play in the Second Qualifying Stage, the position will be included in the positions to be allocated to the Second Qualifying Stage sites on a pro rata basis.

   If an applicant automatically exempt into the Final Qualifying Stage withdraws after all players have begun play in the Second Qualifying Stage (a "Final Qualifying Stage Automatically Exempt Withdrawal"), the position reserved will be reallocated to the first available alternate from the various Second Qualifying Stage sites determined in accordance with the following procedure.

   Before play has concluded at the first to occur of the Second Qualifying Stages, Tournament Competition personnel at PGA TOUR

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Headquarters will conduct a blind clinical drawing to determine the order in which the alternates from the Second Qualifying Stage sites will replace Final Qualifying Stage Automatically Exempt Withdrawals. In conducting such drawing, each Second Qualifying Stage site will be written on an index card and all cards will be shuffled. Cards will then be drawn on a blind basis one by one for purposes of setting the six Second Qualifying Stage sites in order. The first alternate from the first Second Qualifying Stage site drawn will be the first alternate to replace a Final Qualifying Stage Automatically Exempt Withdrawal, the first alternate from the second Second Qualifying Stage site drawn will be the second alternate to replace a First Qualifying Stage Automatically Exempt Withdrawal, and so on through the first alternate from the Second Qualifying Stage site which is chosen sixth. Alternates 7 through 12 will be the second available alternates from the Second Qualifying Stage sites in the order drawn, and alternates 13 through 18 will be the third available alternates from the Second Qualifying Stage sites in the order drawn.

## V. ENTRY FEES; CLOSING DATE

**ENTRY APPLICATIONS MUST REACH PGA TOUR HEADQUARTERS BY 5:00 P.M. EDT ON FRIDAY, SEPTEMBER 26, 1997. NO FACSIMILE APPLICATIONS WILL BE ACCEPTED.**



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***ALL APPLICANTS MUST ENTER BY THE ENTRY DEADLINE OF SEPTEMBER 26, 1997, WITHOUT EXCEPTION.***

Subsequent to and based upon final results of the NIKE TOUR Championship, some exemptions into the Second Qualifying Stage will be earned. Such applicants will be refunded $250 and their entry will be adjusted.

A. Applicants required to play in the FIRST QUALIFYING STAGE: *$3,000*

B. Applicants required to play in the SECOND QUALIFYING STAGE: *$2,750*

C. Applicants required to play in the FINAL QUALIFYING STAGE: *$2,500*

*NOTE*: Entry fees for First and Second Qualifying Stages includes greens fees, practice balls and, if applicable, half of an 18-hole golf cart on each day beginning at noon two days before and during every day of competition. Entry fee for Final Qualifying Stage includes greens fees and practice balls beginning two days before and during every day of competition. Use of golf carts is prohibited at the Final Qualifying Stage; players are required to use caddies.

**ONCE AN APPLICANT HAS TEED OFF IN ANY QUALIFYING STAGE, REFUND OF ENTRY FEE IS NOT POSSIBLE.**

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All applicants must apply on the PGA TOUR's Application to Enter 1997 PGA TOUR Qualifying Tournament form and pay the fee prescribed herein.

**ACCEPTANCE OF APPLICATION TO ENTER; NOTICE OF QUALIFYING SITE(S)**

Upon receipt of entry, all applicants will be assigned a confirmation number indicating that their application has been received and that they are entered into the Qualifying Tournament. Applicant is responsible for keeping this confirmation number and must refer to it when contacting PGA TOUR regarding his entry. Written notification for assignment of qualifying site(s) with confirmation number will be sent by Wednesday, October 8, 1997. ***PGA TOUR IS NOT RESPONSIBLE*** for the timely delivery of the U.S. Postal Service OR any overnight carrier. It is the applicant's responsibility to contact PGA TOUR Headquarters to verify his status in qualifying site(s).

***PLEASE NOTE*** First Qualifying Stage assignments are made based on the date application is received at PGA Headquarters (first come, first served). In order to improve your chances to play at the First Qualifying Stage of your choice, it is IMPERATIVE that your application be received early by PGA TOUR. While PGA TOUR will attempt to accommodate an applicant's preference, assignment to qualifying sites shall be in the discretion of PGA TOUR. Assignments to Second Qualifying Stage sites will be based on First Qualifying Stage finish positions.



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**VII. INFORMATION, CONDITIONS, ETC.**

**PRACTICE**

Applicants may practice at no charge:

First and Second Qualifying Stages — beginning at 12:00 noon two days before the first tournament round and;

Final Qualifying Stage — Monday and Tuesday, December 1 and 2, 1997

Practice before these designated times must be set up with course in advance by applicant. Fees for these practice rounds are at the discretion of the host facility.

**RULES OF GOLF**

Play shall be governed in accordance with the Rules of Golf of the United States Golf Association, as modified by PGA TOUR. Questions or disputes shall be settled by the Rules Committee appointed by PGA TOUR, whose decisions shall be final.

**POSTPONEMENTS AND CANCELLATIONS**

If, in the judgment of the on-site PGA TOUR Tournament Director (whose decision shall be final), adverse weather conditions or any other occurrence or condition beyond the control of PGA TOUR renders commencement or continuation of tournament play inadvisable, play shall

be postponed until such time as the Tournament Director, determine that such weather conditions or other occurrence have improved sufficiently for play to commence or resume, provided that:

First and Second Qualifying Stage is normally scheduled for four rounds and Final Qualifying Stage is normally scheduled for six rounds and in all cases arrangements have been made with the host club to extend through one additional day in the event of postponement or suspensions. The completion of First and Second Qualifying Stage or Final Qualifying Stage competition shall not be postponed beyond one additional day: (a) unless the tournament is not yet considered "official" (at least 36 holes completed for First or Second Qualifying Stage and 72 holes completed fro Final Qualifying Stage); or (b) if at least half the field has completed play before the postponement of the final round, the final round will be completed when conditions permit. If the sixth round cannot be completed as stated above, qualifying would revert back to the standings at the competition of the fourth round.

**APPEARANCE OF PLAYERS**

Players shall present a neat appearance, in both clothing and personal grooming. Blue jeans or shorts shall *not* be worn during practice or Qualifying Stage rounds.



**CONDUCT OF PLAYERS**

A. If a player is determined by Tournament Officials on site at any stage of the Qualifying Tournament to be noncompetitive, PGA TOUR reserves the right to remove said player from the competition.

B. In accordance with the PGA TOUR Alcohol and Substance Abuse Policy, players are *not* permitted to consume alcoholic beverages during any practice round *or* tournament round, on the practice tee *or* putting green. Violation of this policy will result in the removal of the player from the competition.

**CADDIES/GOLF CARTS**

A caddie and/or golf cart is required during all practice and tournament rounds of the First and Second Qualifying Stages. No more than two carts will be allowed per grouping. The player may designate an individual to serve as a caddie and drive a cart for him. Caddies are required to wear long pants while on property. Use of golf carts is prohibited during the Final Qualifying Stage. Players are required to use caddies.

**NEW MEMBER ORIENTATION**

New PGA TOUR members will be *required* to attend the New Member Orientation Program (beginning with a reception on Tuesday evening) December 9 through Friday, December 12, at the TPC at Sawgrass Media Center in Ponte Vedra Beach, FL. During the New

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Member Orientation Program, the PGA TOUR will incur housing and meal expenses, and will allocate a travel allowance. Further information will be made available immediately following the Qualifying Tournament.

New NIKE TOUR members will be required to attend an orientation session on Tuesday, December 9, 1997 from 7:30 a.m. to 12:00 noon at Grenelefe Resort. Exact locations will be posted at the PGA TOUR official scoreboard.

**INQUIRIES**

Please direct inquiries regarding the 1997 PGA TOUR Qualifying Tournament to:

Tournament Competition
PGA TOUR, Inc.
112 TPC Boulevard
Ponte Vedra Beach, FL 32082
Phone: 904-285-3700 Fax: 904-285-2052

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**APPENDIX F — EXCERPTS FROM THE RULES OF GOLF 1998-1999 AND THE RULES OF AMATEUR STATUS (THE USGA)**

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**SECTION III**
**THE RULES OF PLAY**

**THE GAME**
**Rule 1. The Game**

**1-1. General**

The Game of Golf consists in playing a ball from the teeing ground into the hole by a stroke or successive strokes in accordance with the Rules.

* * *

**ADMINISTRATION**
**Rule 33. The Committee**

**33-1. Conditions; Waiving Rule**

The Committee shall lay down the conditions under which a competition is to be played.

The Committee has no power to waive a Rule of Golf.

Certain special rules governing stroke play are so substantially different from those governing match play that combining the two forms of play is not practicable and is not permitted. The results of matches played and the scores returned in these circumstances shall not be accepted.

*Appendix F*

In stroke play the Committee may limit a referee's duties.

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## Appendix I
## LOCAL RULES;
## CONDITIONS OF THE COMPETITION

* * *

### Conditions of the Competition

Rule 33-1 states: "The Committee shall lay down the conditions under which a competition is to be played." Conditions should include such matters as method of entry, eligibility requirements, format, the method of deciding ties, the method of determining the draw for match play and handicap allowances for a handicap competition.

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### OPTIONAL CONDITIONS

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**Transportation**

If it is desired to require players to walk in a competition, the following condition is suggested:

Players shall walk at all times during a stipulated round.

* * * *



## APPENDIX G — NOTICE TO COMPETITORS
## 1997 QUAD CITY CLASSIC

NOTICE TO COMPETITORS
1997 QUAD CITY CLASSIC

This information supplements the PGA TOUR RULES OF PLAY.

*OUT OF BOUNDS* — Defined by white stakes and where applicable white stakes tying into snow fencing and green web fencing.

The Driving Range is out of bounds. Defined by white stakes and where applicable white stakes tying into chain link fencing, snow fencing and green web fencing.

*FLOWER BEDS* — are ground under repair. Defined by wooden ties, black plastic or the cut of the ground.

*AUTOMOTIVE TRANSPORTATION* — Competitors are permitted to use Automotive Transportation during play of Hole #12.

PGA TOUR RULES COMMITTEE

* Do not put a white line around the TV compound!

## APPENDIX H — EXCERPTS FROM CONDITIONS OF COMPETITION AND LOCAL RULES

### CONDITIONS OF COMPETITION AND LOCAL RULES

*The Rules of the United States Golf Association govern play, as modified by the PGA TOUR. See applicable competition's "Notice to Competitors (Players)" for additional Definitions, Local Rules and Conditions. Complete text of Rules and Appendix I may be found in the current Rules of Golf.*

*Unless otherwise noted the penalty for a breach of a Local Rule or Condition is:*

*Match play — Loss of Hole; Stroke Play — Two Strokes*

**Section A — Conditions of Competition**

* * *

**6. Transportation — Appendix I**

Players shall walk at all times during a stipulated round unless permitted to ride by the PGA TOUR Rules Committee. Penalty for Breach of Condition:

Match play — At the conclusion of the hole at which the breach is discovered, the state of the match shall be adjusted by deducting one hole for each hole at which a breach occurred. Maximum deduction per round: two holes.





Stroke play — Two strokes for each hole at which any breach occurred; maximum penalty per round; four strokes. In the event of a breach between the play of two holes, the penalty applies to the next hole.

Match or stroke play — Use of any unauthorized form of transportation shall be discontinued immediately upon discovery that a breach has occurred. Otherwise, the player shall be disqualified.

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**APPENDIX I — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION IN *JONES v. UNITED STATES GOLF ASSOCIATION, INC.* DATED, ENTERED AND FILED JUNE 15, 2000**

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TEXAS**
**AUSTIN DIVISION**

**CIVIL NO. A-00-CA-278 JN**

JA RO JONES

VS.

UNITED STATES GOLF ASSOCIATION, INC.

**ORDER**

Before the Court is Plaintiff Jones' Application for Preliminary Injunction. On June 14, 2000, the Court conducted a hearing in open court and heard arguments on this matter. Upon consideration of the arguments presented at the hearing, the evidence submitted, the briefs filed, the United States of America's *amicus curiae* brief, the applicable legal authority and the entire case file, the Court enters the following Order.

I. Factual Background

Plaintiff Jones is a skilled golfer who suffers from Post Polio Syndrome. This disability[1] forces Plaintiff to use a cart

1. The parties stipulated that Plaintiff Jones is disabled within the meaning of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12181 *et seq.* ("ADA").



to play golf. In all other ways he qualifies to participate in the qualifying round of the United States Senior Open Golf Championship ("Senior Open"). The United States Golf Association ("USGA") does not allow the use of golf carts in the Senior Open. Plaintiff Jones filed suit pursuant to Title III of the ADA seeking an injunction requiring the USGA to allow him to use a cart to play in the United States Senior Open and its qualifying round.

II. Laches

As a preliminary matter, the USGA pleads the defense of laches to Plaintiff's application for preliminary injunction. Essentially the USGA argues that Plaintiff Jones has known for over three years, since he first applied for a waiver of the no-cart rule, that he would not be granted leave to use a cart in the Senior Open. USGA argues that filing suit at this late date, mere days before the qualifying round, has prejudiced its right to present a defense. Upon consideration of the Defendant's arguments and pursuant to the elements necessary to prove laches as set forth in *National Ass'n of Govern. Emp. v. City Pub. Serv.*, 40 F.3d 698, 708 (5th Cir. 1994), the Court finds there was no undue delay on the Plaintiff's part and that there is no undue prejudice on the Defendant's ability to present a defense. Therefore, the Court finds that Defendant's laches argument is without merit.

II. Preliminary Injunction

To obtain a preliminary injunction, the Plaintiff must demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the relief

is not granted; (3) that granting injunctive relief will not result in even greater harm to the other party; and (4) that granting relief will be in the public interest. *United Offshore Co. v. S. Deepwater Pipeline*, 899 F.2d 405, 407-08 (5th Cir. 1990).

Plaintiff's cause of action is based upon Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.* Upon review of the ADA and the relevant cases, particularly *Martin v. PGA Tour, Inc.*, 204 F.3d 994 (9th Cir. 2000); *Olinger v. United States Golf Ass'n*, 205 F.3d 1001 (7th Cir. 2000); and *Johnson v. Gambrinus Co./Spoetzl Brewery*, 116 F.3d 1052 (5th Cir. 1997), the Court finds that Plaintiff has demonstrated a substantial likelihood of success on the merits. The Court further finds that Plaintiff has demonstrated a substantial threat of irreparable harm because Plaintiff Jones' condition is worsening and this is in all likelihood his last opportunity to compete in the Senior Open. *See* Affidavit of Ja Ro Jones. The Court finds that granting injunctive relief will not result in harm to the USGA. Finally, the Court finds that the public interest weighs in favor of granting injunctive relief.

No arguments were made concerning bond. A district court may elect not to require bond. *See Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996). Accordingly, the Court finds no bond is required in this case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the USGA is hereby ENJOINED from prohibiting Plaintiff Ja Ro Jones from using a golf cart during the Senior United States Open Golf Championship and its qualifying round.



IT IS FURTHER ORDERED that no bond shall be required.

SIGNED AND ENTERED this 15th day of June, 2000.

s/ James R. Nowlin
JAMES R. NOWLIN
CHIEF UNITED STATES
DISTRICT JUDGE